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The Revised Code

OF THE

LAWS OF MISSISSIPPI,

IN WHICH

315
1457

ARE COMPRISED ALL SUCH ACTS

OF THE

GENERAL ASSEMBLY,

OF A PUBLIC NATURE, AS WERE IN FORCE

AT THE END OF THE YEAR 1823;

WITH A

GENERAL INDEX.

Published according to an act of the general assembly, entitled An act, declaring what laws of a public nature shall be incorporated in the revised code, and providing for the publication thereof, passed June 30, 1822, and an act supplemental thereto, passed January 21, 1823.

NATCHEZ:
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1824.

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Ashwood Place, May 28th, 1822.

Sir,

In compliance with an act, passed by the general assembly of this state, entitled "An act to revise and consolidate the statutes of this state," approved February 12, 1821, and the act supplemental thereto, approved November 27, 1821, I have the honor to inform you, that I have carefully revised and consolidated all the laws of a public nature now in force, and have prepared such additional bills, as in my opinion, are "necessary and proper to complete the code of statute law of this state," and that the work has been deposited in the office of the secretary of state, for the purposes contemplated in the several acts relating to this subject.

In attempting to fulfil the arduous and important duty requested of me by the general assembly, I have not been insensible to the great responsibility which I incurred, nor to the very inadequate abilities which I was enabled to bring to the discharge of so high a trust, in a manner calculated to meet the just expectations of the country, and to promote the ends of public justice, and the speedy redress of private wrongs and injuries. Since the work was commenced, I have assiduously devoted my whole time to its accomplishment, interrupted only by the paramount duties and obligations of my official station; and have only to regret that the time, within which I was required to report the "Revised Code," did not admit of more accurate and enlarged researches into the statutes of other states, and of that serious and intense reflection and mature deliberation, so essential in prescribing general rules which are to govern the several relations of men, and the remedies to be applied before enlightened tribunals, properly constituted for every infraction of those rules, in reference either to the private immunities of individuals or the peace and good order of the whole community. The magnitude of the task to be performed by a single person without the aid of learned assistants might well have justified an extension of the period for its fulfilment; but it has been my earnest wish and constant endeavor to overcome all the difficulties which I might encounter, and to exhibit a volume of statute law calculated to give due support and encouragement to public education, as the surest foundation on which to rest the liberty, safety and prosperity of the present and future generations; to enlighten the minds of the poor and indigent orphans who are destitute of the means of acquiring a knowledge of their rights and of the inestimable principles of free government, or of the more sacred truths of the christian religion, without the benevolent aid of the state; to punish vice in all its aspects, by suitable restraints and penal sanctions; and so to arrange and distribute the powers of the government, growing out of the constitution, among the several grades of magistracy presiding over our courts of justice as to give efficiency to the laws by a prompt and impartial administration of them in all cases requiring the interposition of legal coercion, according to the jurisdiction entrusted to each respective tribunal.

If, sir, I have been so fortunate as to have succeeded in placing these interest-ing regulations on a basis acceptable to the legislature, before whom the work will shortly pass in review, I shall be more than compensated for all the labor and attention, which the effort to do so has called forth, by the consolation which will be imparted to me from the reflection, that I have rendered some service to a people, to whom I owe so much for the indulgent confidence which they have heretofore reposed in me.—But if, as may reasonably be expected, errors have intervened in any of the numerous statutes, which I have prepared and submitted to the examination of the general assembly, I feel confident that they will find a certain and salutary corrective in the wisdom and vigilance of the members of that honorable body.

I have the honor to be, with great respect,
your most ob't. serv't.
GEO. POINDEXTER.

His Excellency WALTER LEAKE.
Gov. of the state of Mississippi.

REVISED CODE

OF THE

State of Mississippi.

CHAPTER 1.

An act, to revise and consolidate the statutes of the state.

Passed February 12, 1821.

SEC. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi in general assembly convened*, That George Poindexter, governor of the state of Mississippi, be, and he is hereby authorised and requested to revise and amend the statutes of this state; and it shall be his duty to arrange and consolidate all the statutes of a public nature which may be in force in said state, at the end of the present session of the general assembly, and report the same by bills, to the next session of the legislature; and so soon as the work may be completed, to lay the same before the judges of the supreme court, whose duty it shall be to examine the revised code, and if they find it completed agreeably to the intention of this act, they shall certify the same to the secretary of state, in whose office they shall deposite the said revised code.

G. Poindexter requested to revise and amend the statutes.

When completed to be laid before the judges of supreme court.

SEC. 2 So soon as the said revised code shall be deposited in the office of the secretary of state, he shall certify the same to the auditor of public accounts, who shall thereupon issue his warrant in favor of the said George Poindexter, for the sum of twelve hundred dollars, as a full compensation for his services, which shall be paid out of any moneys in the treasury not otherwise appropriated.

Compensation.

SEC. 3. It shall be the duty of the judges of the supreme court, and the attorney general, if called upon by the said George Poindexter, to give him such information as they may be in possession of, relative to any defect in the laws of this state;

Judges of the sup. court and att. gen. to give information if called upon.

Additional bills to be reported

and it shall be his duty to prepare and report to the next legislature, such additional bills, as may be found necessary and proper to complete the code of statute law of this state.

Clerk appoint'd

His compensation.

Sec. 4. For the purpose of carrying into effect the provisions of this act, the aforesaid George Poindexter shall be authorised to appoint a clerk, who shall be entitled, when the revised code is finished as aforesaid, to sixteen cents for every hundred words the same may contain, to be paid out of any moneys in the treasury not otherwise appropriated.

CHAPTER 2.

An act, supplemental to an act, entitled "An act, to revise and consolidate the statutes of the state."

Passed November 27, 1821.

Further time allowed for the revisal of the laws.

When completed to be deposited in the office of secretary of state.

Sec. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi, in general assembly convened,* That further time until the next session of the general assembly be, and the same is hereby allowed, to finish the revisal and consolidation of all the laws of a public nature in force in this state, and to report such additional bills as may be necessary to complete the code of statute laws of the state. And the work, when completed, shall be deposited in the office of the secretary of state, and shall be open to the examination of the judges of the supreme court and the attorney general, who may, if their official duties will permit, inspect the same, and recommend such amendments as they, or either of them, may think necessary, to the next general assembly.

Governor may appoint assistant reviser.

Compensation.

Sec. 2. For the purpose of hastening the completion of said code, and to aid the person now employed in said work, the governor of this state for the time being, may appoint an assistant reviser of the statutes, who shall perform such part of the duties, as may be agreed on between himself and the reviser heretofore appointed; and for his services he shall receive the sum of six hundred dollars, payable on the delivery of the code according to law, out of any money in the treasury not otherwise appropriated.

Appropriation to the reviser & clerk when to be paid.

Sec. 3. For the statutes already revised and completed, there shall be paid, out of any money in the treasury not otherwise appropriated, two thirds of the sum allowed by the act to which this is a supplement, to the reviser named in said act, and sixteen cents for every hundred words, of the several bills, to the person appointed to act as clerk to the said reviser; and the residue of the said appropriation shall be paid, so soon as the code is deposited in the office of secretary of state as aforesaid.

CHAPTER 3.

A RESOLUTION.

Passed June 29, 1822.

Whereas, George Poindexter, late governor of this state, has performed a most laborious and patriotic service, at the request of the general assembly, in revising the code of public law within this state, be it therefore, Preamble.

Resolved by the senate and house of representatives of the state of Mississippi, in general assembly convened, That the governor of this state be, and he is hereby authorized and required, to procure at the expense of the state, an elegant copy of the Encyclopœdia, and present the same to the said George Poindexter, accompanied by a written expression of the gratitude of the state for the service aforesaid. Encyclopœdia to be presented to G. Poindexter.

CHAPTER 4.

An act, declaring what laws of a public nature shall be incorporated in the revised code, and providing for the publication thereof.

Passed June 30, 1822.

SEC. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi, in general assembly convened,* That there shall be published an edition of the laws of this state, in which shall be contained the following matters, to wit:— An edition of the laws of this state to be published.

1. An act, to reduce into one, the several acts and parts of acts, concerning the establishment, jurisdiction and powers, of the superior courts of law.
2. An act, concerning the appointment, jurisdiction and powers of justices of the peace, within this state.
3. An act, concerning the establishment, jurisdiction, and powers of inferior courts of law, in the several counties of this state.
4. An act, to reduce into one the several acts concerning the organization and discipline of the Militia of this state, and to repeal the laws heretofore enacted on that subject.
5. An act, to reduce into one the several acts concerning executions, and for the relief of insolvent debtors.
6. An act, to reduce into one the several acts concerning the writ of habeas corpus, and to annul the remedy by writ *de homine replegiando.*
7. An act, to reduce into one the several acts, concerning escheats.
8. An act concerning conveyances.
9. An act, concerning the appointment and duties of Constables.
10. An act, for the punishment of crimes and misdemeanors.
11. An act, concerning the appointment and duties of Sheriffs.

12. An act, directing the method of proceeding in courts of equity against absent debtors and other absent defendants, and for regulating the proceedings on attachments against absconding debtors.

13. An act, for the limitation of actions, and certain proceedings in civil cases, and for preventing frivolous and vexatious suits.

14. An act, for the better securing the payment of rents, and preventing the fraudulent practices of tenants, and to regulate the practice of suing out and prosecuting writs of replevin.

15. An act, concerning the salaries of certain officers therein named, fixing the compensation of the members of both houses of the general assembly, and their officers, and prescribing the mode in which new security may be required in certain cases.

16. An act, providing for the appointment of inspectors of flour and other provisions, and of lumber, and for prescribing their powers, duties and compensation in office.

17. An act, to prevent and punish bribery and extortion.

18. An act, regulating elections within this state.

19. An act, concerning divorces and alimony.

20. An act, for the suppression of vice, and punishing the disturbers of religious worship, and sabbath breakers.

21. An act, to provide for the custody of prisoners committed under the authority of the United States.

22. An act, to prevent tresspasses in certain cases, and declaring what shall be deemed a lawful enclosure.

23. An act, to reduce into one the several acts and parts of acts relating to dower.

24. An act, prescribing the duties of the secretary of state.

25. An act, to suppress duelling.

26. An act, to prevent the importation and spreading of the small pox, and other contagious diseases.

27. An act, to prevent frauds and perjuries.

28. An act, concerning the manner of authenticating foreign deeds, records, and other instruments in writing.

29. An act, granting relief in certain cases against collusive judgments, and wrongful alienations of land.

30. An act, concerning the appointment duties, and compensation of county surveyors.

31. An act, concerning the partition of lands held by coparceners, joint tenants, and tenants in common.

32. An act, concerning pardons, reprieves, and the remission of fines and forfeitures.

33. An act concerning hawkers and pedlers.

34. An act, to provide for the support and maintenance of bastard children.

35. An act, concerning notaries public.

36. An act, concerning the escape of debtors, and other prisoners.

37. An act, concerning arbitrations and awards.

38. An act, concerning the crimes of poisoning and stabbing, and prescribing the punishment thereof.

39. An act, concerning the attorney general and district attorneys.

40. An act, for the better organization of volunteer corps of militia in this state, and for other purposes.

41. An act, to establish a literary fund, and for the encouragement and support of education in this state.

42. An act, to reduce into one the several acts, concerning last wills and testaments, the duties of executors, administrators and guardians, and the rights of orphans and others, representatives of deceased persons.

43. An act, to establish a court of chancery in this state, and to prescribe the rules of proceedings therein.

44. An act, to regulate the solemnization of marriages, prohibiting such as are incestuous, or otherwise unlawful.

45. An act, to reduce into one the several acts regulating inns, taverns, and houses of private entertainment, and for the restraint of tippling houses.

46. An act, to reduce into one the several acts concerning patrols.

47. An act, regulating the rate of interest.

48. An act, farther to provide for the collection of fines, penalties, forfeitures and amercements.

49. An act, concerning forcible entries and detainers.

50. An act, to render cotton receipts, promissory notes, bonds and other writings obligatory, for the payment of money or other thing, negotiable; and prescribing the mode of protesting foreign and inland bills of exchange, and the effect thereof.

51. An act, to reduce into one the several acts, concerning slaves, free negroes, and mulattoes.

52. An act, to prevent unlawful hunting.

53. An act, concerning the appointment and duties of county treasurers.

54. An act, prescribing the mode of ascertaining and assessing the taxable property within this state, and for collecting the public revenue.

55. An act, concerning mills, mill dams, cotton gins, and other machines erected on water courses.

56. An act, to reduce into one act, the several laws to suppress the evil practice of gaming.

57. An act, concerning the appointment and duties of treasurer and audtor of public accounts.

58. An act, concerning coroners.

59. An act, concerning strays and drovers, horses, cattle, and other stock, and directing stock brands and marks to be recorded.

60. An act, concerning attorneys and counsellors at law.

61. An act, concerning weights and measures, passed the 4th February 1807; and the act supplementary thereto, passed December 23d, 1815.

62. An act, to regulate the admission of physicians and surgeons, to the practice of medicine and surgery in the state of Mississippi; passed the 12th of February, 1819.

63. An act, to prevent the empiracal practice of physic and surgery in this state; passed the 12th of February, 1820.
64. All the laws now in force relative to the poor.
65. All laws of a public nature, relating to colleges and seminaries of learning.
66. An act, to establish and organize the supreme court, and to define the powers and jurisdiction thereof.
67. An act, concerning highways, ferries and bridges.
68. An act, establishing the fees of certain officers therein named
69 An act, to establish a bank in the Mississippi territory; passed December the 23d, 1809.
70. An act, supplemental to an act, entitled An act, to establish a bank in the Mississippi territory; passed the 4th of February, 1818.
71. An act, for the relief of certain mechanics; passed February 5, 1819.
72. An act, for the relief of mechanics; passed February the 9th, 1821.
73. A resolution in favor of George Poindexter, and the letter of the reviser, transmitting the code.
74. The acts of 1821, relating to the revised code.
75. An act, to define the boundaries of the several counties of this state.
76. The several acts relating to the permanent establishment of the seat of government.
77. An act, providing for opening and repairing roads, and building and repairing bridges in Adams county; and so much of the act of 1821 on that subject, as is not repealed by the above recited act.
78. An act, declaring what laws of a public nature shall be incorporated in the revised code, and providing for the publication thereof.
79. An act, to amend the charter of the bank of the state of Mississippi; passed June the 29th, 1822.
80. An act, to amend the "Act, to reduce into one the several acts concerning last wills and testaments, the duties of executors, administrators and guardians, and the rights of orphans and others, representatives of diseased persons."

Manner of prefixing date to each act prescribed.

Sec. 2. In publishing the laws aforesaid, the days upon which they respectively passed, shall be perfixed to each act, immediately succeding its title.

Printing and binding.

Sec. 3. The said edition shall be published in one octavo volume, printed in the best type, on good paper, well bound in calf skin, and lettered: it shall contain a complete index, and proper marginal notes and references.

Commissioners appointed.

Sec. 4. The governor be, and he is hereby authorised to appoint three commissioners to contract for the printing and binding of fifteen hundred copies of the said edition of the laws:

and it shall be the duty of the said commissioners to take bond, with good and sufficient security from the printer and book binder, who may contract for the printing and binding of said work, payable to the governor of this state for the time being, and his successors in office, in the penalty of five thousand dollars each, with condition that he shall well and truly execute the said printing and binding according to contract, specifying therein a particular description of the kind of paper and type, binding and lettering, to be used in the execution of said work. And if it shall appear to the governor, after the said work has been completed, that the same has not been done according to contract, he shall have power and authority to reject the same, and return it to the person so failing to fulfil his contract; and such defaulter shall moreover be liable to an action on his bond, for all damages which the state may have sustained by reason of such default.

Gov. may reject the work if not done according to contract.

Sums necessary to carry this act into effect.

Sec. 5. The auditor of public accounts shall be, and he is hereby authorised and required, from time to time, to issue his warrant on the treasury of the state, on the order of the said commissioners or a majority of them, for all sums which may be necessary to carry into effect this act.

Person appointed by the gov. to superintend the work.

Sec. 6. The publication of said edition of the laws, shall be under the immediate superintendence of such fit person as the governor shall appoint for that purpose, whose duty it shall be to prescribe the order in which the several laws shall be published in the code, carefully classing them according to their subject matter, with reference to the time of their passage: he shall cause to be made proper marginal notes of the contents of each section, and a full and complete index to the whole code, and he shall cause the proof sheets to be carefully examined during the publication: he shall also prepare an appendix to the said work, in which shall be comprised a summary of all the acts of a private nature, which have been passed either by the general assembly of the late Mississippi territory, or by the general assembly of this state, since the adoption of the constitution, specifying the date and title of such acts, and the substance thereof: *Provided*, That such private acts only shall be included in said appendix, as may be in force, or which may have bare relation to the rights of persons or property. He shall also incorporate in said appendix the constitution of the United States and of this state, the articles of cession and agreement between the United States and Georgia, and such acts of congress as have a direct bearing on land titles within this state; also, the act entitled "An act, to enable the people of the western part of the Mississippi territory, to form a constitution and state government, and for the admission of such state into the union, on an equal footing with the original states;" and the person so appointed shall receive for his services such compensation as the governor shall contract to pay him, which shall be paid out of

Compensation.

the public treasury, on the certificate of the governor, that the services have been accurately and faithfully performed.

Laws of a public nature in the revised code, heretofore printed, to be in force.

Publication and distribution of the acts enumerated in the code.

Acts to be in force when promulgated

Rights under former laws, not affected.

SEC. 7. The laws of a public nature in the revised code, which have been heretofore printed and promulgated, shall have the same force and effect as they had prior to the passage of this act; and it shall be the duty of the secretary of state to cause to be printed by the public printer, and promulgated, one thousand copies of the acts enumerated in the said code, in the form of a weekly register, and to distribute the same among the several counties according to their representation on the floor of the house of representatives: and the public printer shall receive for printing laws in the form of a weekly register, the sum of two dollars and fifty cents per page, for each page contained in one copy of said register when completed, and the said register shall be of the same size page, as the page of the acts of the last session, to be paid out of the treasury of the state, on the certificate of the secretary of state, that the work has been executed according to law. And so soon as said acts are printed and promulgated as aforesaid, the same shall be in full force and effect: *Provided*, That all rights which shall have accrued, and all remedies which shall have been commenced under former laws, shall be and remain as though the said code had never been adopted.

Repealing clause.

(*See chap. 5. sec. 2, 3.)

Sec. 8. When the said code shall be printed and promulgated as aforesaid, all acts and parts of acts of a general and public nature, which shall not be published in the revised code pursuant to the directions of this act, shall be, and the same is hereby repealed:* *Provided*, That such repeal shall not prevent the prosecution of any offence committed, or impair any right accrued prior to such promulgation, but such offence may be prosecuted, and such right may be maintained and asserted, in such manner as if this repealing section had never passed.

CHAPTER 5.

An act, to amend "An act, declaring what laws of a public nature shall be incorporated in the revised code, and providing for the publication thereof."

Passed January 21, 1823.

Certain acts revived.

SEC. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi in general assembly convened*, That An act, to authorize the judges of this state to appear as counsellors and attorneys in the courts of the United States, in this state, passed the 22d of June, 1822; and An act, providing for admitting copies of land office records as evidence, in the courts of this state, passed 29th June, 1822, be and are hereby revived.

Construction of the act of which this is an amendment.

Sec. 2. And whereas doubts exist as to the intention of the general assembly in declaring all acts and parts of acts of a general and public nature, which shall not be published in the revised code, pursuant to the directions of the act of which this is an amendment, repealed;* to remove which, therefore, *Be it further enacted*, that all acts and parts of acts, which were in force on the thirtieth day of June, 1822, of a public nature, but local in their application, or of a personal or private nature, were, since the passage of the act of which this is an amendment, and still are in force and unrepealed; and that no acts or parts of acts except such as were both public and general in their operation and which were not directed by that act to be published in the revised code are or were intended to be repealed.

(*See chap. 4, sec. 8.)

Further construction.

Sec. 3. Such repeal shall not be considered as reviving any debt, demand, suit or prosecution which was barred by any act of limitation at the time of passing said act, but every such debt, demand, suit or prosecution, shall be and remain in the same situation; and all debts, demands, suits or prosecutions, the causes whereof accrued prior to the passage of said act, shall be and remain subject to the same acts of limitation, as they would have been if the said act had not been passed.

Additional acts to be published in the revised code.

Sec. 4. If the commissioners who were appointed to contract for the printing and binding of the revised code of laws, shall already have contracted, or shall hereafter contract with the persons who have undertaken to print and bind said code, for the printing and binding, in the same volume, such of the laws of the present session, as it may be deemed expedient to be incorporated therein, it shall be the duty of the person appointed to superintend the publication, to have all the acts of the present session of a public and general nature, and the revived acts mentioned in the first section of this act, published in said code, and to prepare a summary of all the acts of a private nature, passed at the present session which have relation to the rights of persons or property, to be incorporated in the appendix to said work, *Provided* however, that if a summary of the private acts of this session shall be found to swell the size of said work materially, it may be omitted in the discretion of the superintendant.

Acts repealed to be omitted.

Sec 5. It shall be the duty of the superintendant of the public printing, to omit all acts and parts of acts which were directed to be published in the revised code, and which have been repealed at the present session of the general assembly.

CHAPTER 6.

An act, regulating elections within this state.

Passed June 13, 1822.

Time and place of holding elections.

(*See Ap. election districts.)

Sec. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi, in general assembly convened,* That all elections for representatives to the general assembly shall be held at the court houses, or places of holding courts in the several counties of this state, unless otherwise specially provided for by law;* and the times of holding such elections, shall be the first Monday, and the following day in August in each year; and all elections for senators in the general assembly, for governor, lieutenant governor, representative to congress, sheriffs and coroners, shall be held at the same places, and on the same days of the year in which they are respectively chosen, as are herein directed in the case of representatives to the general assembly.

Sheriff to give notice of the time, place and office to be filled.

Hour of opening and closing poll.

Notice, in case of a vacancy.

Sec. 2. The sheriff of each county in this state shall, at least thirty days previously to the time appointed for holding each election for representatives to the general assembly, by advertisement set up at the door of the court house, and three other public places in his county, notify the inhabitants of the time and place or places of such election, and what offices are to be filled by such election; and the sheriff, on the days of election, shall open the poll at ten o'clock in the morning, and continue the same open until the hour of four o'clock in the afternoon of each day, and no longer. In case a vacancy happen, and the governor shall issue his writ of election, then the sheriff shall advertise such election, and give a time as near the thirty days, as the period of election will allow; provided it be not less, in any case, than ten days.

Returning officers of the several counties.

Sec. 3. The sheriffs of the several counties shall be the returning officers of their counties, respectively; and, if at any time it shall happen that there be no sheriff or deputy sheriff attending the election, or if the sheriff shall be a candidate at such election, any justice of the peace of the county, who shall be summoned by the sheriff for that purpose, shall be, and he is hereby authorised to perform the duties, which are by this act enjoined upon the sheriff, and shall be the returning officer of such county.

Inspectors of elections, how appointed.

Sec. 4. The several county courts in this state, at the term next preceding the day of any election, shall appoint three inspectors, to superintend the election in their respective counties; and, if it shall at any time happen that any such court shall fail to make such appointment, or if any person or persons so appointed, shall fail to serve, the sheriff with the approbation of one justice of the peace, and two respectable freeholders of the county, shall appoint inspectors to fill the vacancy occasioned by any such failure.

Inspectors to appoint clerks.

SEC. 5. The said inspectors are hereby authorised and required to appoint three proper persons, to act as clerks of the election, whose duty it shall be to take down in writing, the names of all persons voting.

Clerks and inspectors to take oath.

SEC. 6. The clerks and inspectors of every such election shall, before they proceed to business, take an oath, (or affirmation,) faithfully to perform their duties at such election, agreeably to law, according to the best of their skill and judgments; which oath or affirmation shall be administered by the sheriff, or any justice of the peace of the county.

Manner of voting and counting the votes.

SEC. 7. All elections by the people in this state, shall be by ballot: and every person entitled to vote for representatives to the general assembly, shall deliver to the sheriff or other returning officer, in presence of the inspectors, a ticket or scroll of paper, on which shall be written or printed the name or names of the person or persons for whom he intends to vote; which ticket the returning officer shall, in the presence of the inspectors, put into the ballot box, and at the same time, the clerks of the election shall take down on separate lists the name of every person voting; and when the election shall be closed, the returning officer and inspectors shall, in the presence of such of the candidates and electors as may choose to attend, open the box and number the ballots, at the same time reading aloud the names of the persons who shall be voted for on each ticket, which shall be taken down by the clerks, in the presence of the said returning officer and inspectors; and if there should appear two tickets rolled up together, or if any ticket shall contain the names of more persons than such elector had a right to vote for, in either case, such ticket shall not be numbered, but shall be adjudged void; and when the tickets shall be numbered, the persons having the greatest number of ballots shall be declared duly elected: but when two persons shall have an equal number of votes, the returning officer shall have the casting vote, but shall not in any other case whatsoever.

When two persons have an equal number of votes, the returning officer to have the casting vote.

Elections for representative to congress.

SEC. 8. The representative or representatives to congress from this state, shall be elected by the qualified electors, at the time of choosing representatives to the general assembly, once in every two years, to be computed from the first Monday and the day following in August, in the year of our Lord one thousand eight hundred and twenty: and the returning officer of each county shall, within fifteen days after such election, certify under his hand and seal to the secretary of state, the whole number of votes given in his county to each candidate for congress; and it shall be the duty of the secretary of state to sum up the whole number of votes thus returned, and declare the candidates elect, who may have the greatest number of votes, by publication in some newspaper published at or nearest the seat of government. And it shall be the duty of the governor to deliver to the person (or persons) who shall be declared duly elected, proper creden-

Gov. to deliver to the person elected proper credentials.

tials under his hand, with the great seal of the state affixed thereto; which shall entitle him to a seat in the body of which he is elected a member.

Elections for members of the gen. assembly, how certified and returned.

SEC. 9. It shall be the duty of the returning officer of each county, and of each senatorial district, within fifteen days after every election for senators and representatives in the general assembly, to deliver to each candidate who shall have the greatest number of votes, a certificate under his hand and seal, that he is duly elected a member of the senate or house of representatives, as the case may be; and also to transmit within the time aforesaid, to the secretary of state, to be filed in his office, a statement certified under his hand, of the whole number of votes given to each candidate for the senate and house of representatives, in the county or senatorial district for which he is the returning officer; and if it shall appear to the satisfaction of the senate or house of representatives, that any person returned to either house as a member elect, has obtained his election by bribery, tumult, or any other improper proceeding, he shall be expelled, and the act and cause of expulsion shall be published in the journal of the house of which the person shall be returned a member.

Bribery, &c. cause for expulsion.

Elections for sheriff and coroner.

SEC. 10. The returning officer of each county shall, within fifteen days after every election of sheriff and coroner, certify under his hand and seal to the secretary of state, the number of votes given for each candidate for said offices respectively, in his county; and the candidate having the greatest number of votes shall be commissioned by the governor, sheriff or coroner, as the case may be; and it shall be lawful for the said officers, or either of them, to give bond and take the oath required by law, and enter upon the duties of their offices respectively, immediately after they shall have been elected, and their acts are hereby declared to be as valid and effectual in law, before commissions from the governor shall be received by them, or either of them, as afterwards.

Acts valid before commissioned on taking oath and giving bond.

Elections for gov. &c. how conducted.

SEC. 11. All elections for governor, lieutenant governor, representative to congress, sheriffs and coroners, shall be held and conducted in the same manner in all respects, as is herein directed in elections for senators and representatives in the general assembly: *Provided*, That the returns of every election for governor and lieutenant governor, shall be made in the manner prescribed in the constitution.

Writs of elections.

SEC. 12. In case of the death, resignation, or removal of any representative to congress, senator or representative in the general assembly, sheriff or coroner, the governor shall issue his writ of election, directed to the sheriff, or other returning officer or officers of the several counties in this state, or the district or county in which the vacancy shall happen, as the case may be, directing an election, to be held according to law, to supply the vacancy occasioned by such death, resignation, or removal; which election shall be held and conducted, in all respects, agreeably to the provisions of this act.

Persons convicted of high offences not allowed to vote, unless pardoned.

SEC. 13. No person shall vote at any election whatever in this state, who shall have been convicted by the verdict of a jury, and the final judgment or sentence of a court of competent jurisdiction, of bribery, perjury, forgery, or other high crime or misdemeanor, unless the person so convicted shall receive a full pardon for such offence.

Penalty for illegal voting.

SEC. 14. Any person who shall vote at any election not being legally qualified, or who shall vote at more than one place, at any election, or shall vote out of the county of his permanent residence, or out of the city or town entitled to separate representation in which he resides, shall forfeit and pay the sum of two hundred dollars, to be recovered by information or action of debt, in the name of any person who will sue for the same, before any court having competent jurisdiction; one moiety thereof to be applied to the use of the proper county, or city, or town entitled to separate representation, and the other moiety to the use of the person suing for the same; *Provided*, That such prosecution shall be commenced within six months after such offence shall have been committed.

Returning officer to preserve order, and make out a list of offences committed, for prosecution.

SEC. 15. Every sheriff or other returning officer, is hereby invested with full power, under the direction of the inspectors, to keep and preserve order in and about the house in which an election may be held; to commit to jail, for a period not exceeding the time of holding the election, any person or persons who may disturb such election; and moreover, it shall be the duty of every sheriff or other returning officer to make out a statement of all offences committed against this act, which may come to his knowledge, and deliver the same to the attorney general or district attorney, as the case may be, at or before the next term of the circuit court of his county, that the offenders may be prosecuted by information or indictment, as said attorney may see fit; and on conviction of the offender or offenders, by the verdict of a jury, the court shall sentence him or them to pay such fine, and be imprisoned for such period not exceeding six months, as may be deemed a sufficient punishment for the offence with which he or they shall stand convicted; except in cases where the punishment is particularly prescribed by this act: and if the sheriff or returning officer shall neglect to make out a statement of any offence committed against this act, which may come to his knowledge as aforesaid, any citizen of the county may do the same, or the grand jury of the county may, on their own knowledge, present all such offenders. And if any sheriff or other returning officer shall wilfully neglect to return an offender against the provisions of this act, as aforesaid, on conviction thereof, before any court of competent jurisdiction, he shall be fined in a sum not exceeding one thousand dollars, nor less than one hundred dollars, for the use of the county for which he is sheriff or returning officer.

Power and duty of inspectors of elections.

SEC. 16. The inspectors of elections shall take care that such elections are conducted fairly, and agreeably to law, they shall cause this act to be read aloud by the returning officer, at the place of holding the election, immediately after the polls are opened. They shall be judges of the qualifications of voters, and may, if they think fit, require of any person offering to vote, an oath or affirmation, that he is duly qualified an elector according to the constitution and laws of this state: and if any person taking such oath or affirmation, shall afterwards be found to have sworn or affirmed falsely, such person shall be deemed and held guilty of perjury, and shall suffer the pains and penalties of wilful and corrupt perjury.

Sheriff to procure ballot boxes.

Returning officer to take charge of the box, at the close of the polls on the first day of the election.

SEC. 17. It shall be the duty of the sheriff of each county in this state, to procure a sufficient number of ballot boxes for holding every election for governor, lieutenant governor, representative to congress, senators and representatives to the general assembly, sheriffs and coroners in his county; which boxes shall be secured by good and substantial locks, and at the close of the polls on the first day of the election, the sheriff or other returning officer shall take charge of the box at the election which he shall hold, and deposite the same in some secure place, and neither unlock or open it himself, or suffer any other person to have access to it in any manner whatever, until the polls are closed on the day following; and the sum necessary to procure such boxes, shall be allowed to the sheriff by the county court, and paid out of the treasury of the proper county.

Apportionment of representatives and senators in the general assembly.

SEC. 18. The apportionment of representatives and senators in the general assembly of this state, shall be as follows, to wit: The county of Warren shall be entitled to one representative; the county of Jefferson, to two representatives; the county of Claiborne, to two representatives; the county of Adams, exclusive of the city of Natchez, to two representatives; the city of Natchez, to one representative; the county of Wilkinson, to three representatives; the county of Amite, to three representatives; the county of Pike, to three representatives; the county of Franklin to two representatives; the county of Lawrence, to three representatives; the county of Marion, to one representative; the county of Hancock, to one representative; the county of Jackson, to one representative; the county of Green, to one representative; the county of Perry, to one representative; the county of Covington, to one representative; the county of Wayne, to two representatives; the county of Monroe, to one representative; and the county of Hinds, to one representative. And the counties of Claiborne and Warren, shall be entitled to one senator; the counties of Jefferson and Hinds, to one senator; the county of Adams inclusive of the city of Natchez, to two senators; the county of Wilkinson, to one senator; the counties of

Amite and Franklin, to one senator; the counties of Pike and Marion, to one senator; the county of Lawrence to one senator; the counties of Wayne, Covington and Monroe, to one senator; and the counties of Green, Jackson, Perry and Hancock, to one senator; it being the apportionment made February 12th, 1821.

Elections in any city or town entitled to separate representation how conducted.

SEC. 19. All elections held by virtue of this act, in any city or town which now is, or may hereafter be entitled to separate representation, shall be conducted by the sheriff or other returning officer of the county in which such city or town is situated, in the same manner in all respects, as the like elections are directed to be held and conducted throughout this state; and the sheriff, or other returning officer of the county in which such city or town may be, shall be the returning officer for the senatorial district to which they belong; and in each senatorial district which shall be composed of more than one county, the sheriff of the county first named in the district, shall be the returning officer in all elections for senators to the general assembly, and the sheriffs of the several counties in each district, shall meet at the court house of the county first named in such district, within five days after an election for a senator shall have been held, and then and there compare the polls respectively taken in their several counties, and the candidate who shall have received the greatest number of votes of the whole district, shall be entitled to a certificate that he is duly elected, from the sheriff of the county first named in the district in the manner provided for by this act; and if from any cause, the sheriff of any county in the district shall be prevented from meeting and comparing the polls, on the day and at the place herein mentioned, those present shall adjourn from day to day for three days, until all of them shall attend, and the business of the meeting shall be completed.

Returning officers of senatorial districts.

Sheriffs of the several counties in each district to meet and compare the polls.

Casting vote in senatorial districts.

SEC. 20. If on comparing the polls of any senatorial district, it shall be found, that two or more candidates standing highest thereon have an equal number of votes, the returning officer of the district shall have the casting vote, and decide the election.

Elections for representative to congress, how decided, when two standing highest have an equal number of votes.

SEC. 21. If on comparing the polls returned to the office of the secretary of state for representative to congress, it shall be found, that two or more candidates standing highest thereon, have an equal number of votes, the election shall be forthwith decided between the candidates so having an equality of votes, by lot, fairly and publicly drawn, under the direction of the governor and secretary of state.

Penalty for shewing partiality by the officer conducting the election.

SEC. 22. If any sheriff or other officer conducting an election, shall directly or indirectly so interfere in the election of governor, lieutenant-governor, representative to congress, senator or representative to the general assembly, sheriff or coroner, as to shew partiality for any of the candidates, he shall forfeit and pay the sum of five hundred dollars, to be recovered on bill, plaint or information, in any court of competent jurisdiction, in the name of any person who will sue for the same; one moiety to the use of the person so suing, and the other moiety to the state, for the use and benefit of the literary fund; and moreover, be deprived of his right of voting for two years, at any such election thereafter.

Contested elections for senators and representatives in the general assembly.

SEC. 23. All contested elections of senators and representatives in the general assembly, shall be determined by the house to which the member whose seat is contested shall be returned; and the house in which such contest may be depending, or any committee appointed to investigate the facts, shall have power to compel the attendance of witnesses, and to order the production of such papers as they may deem material to the inquiry, touching the validity of such election; and if it should be determined by the senate or house of representatives, as the case may be, that any election for a senatorial district, or for a member or members of the house of representatives from any county, city, or town in this state, shall be set aside and annulled for bribery, tumult, or other illegal or improper conduct, the seats of the senator or senators returned from the district, and of the representative or representatives returned from the county, city, or town, in which such bribery, tumult, or other illegal or improper conduct shall have happened, shall be vacated, and the governor shall forthwith issue a writ of election for such senatorial district, county, city, or town, as the case may be, to supply the vacancy occasioned thereby.

Contested elections for governor

SEC. 24. No election for governor or lieutenant-governor shall be contested, unless, upon the petition of at least one hundred qualified electors, in one or more counties of this state, setting forth the cause or causes why such election is contested; and on the presentation of a petition signed as aforesaid, the senate and house of representatives shall, by joint resolution, appoint a day on which they shall assemble in one room, and when so assembled, the president of the senate shall take the chair, and cause the petition to be read, whereupon, the members of both houses present shall proceed by joint ballot to elect a committee, which shall consist of four members of the senate and seven members of the house of representatives, which committee shall take into consideration said petition, and shall have power to compel the attendance of witnesses, and to order the production of such papers as may be deemed material to the inquiry, and when said joint committee shall have reported to their respective houses, the senate and house of representatives shall, in manner aforesaid, appoint a day on which they will again assemble in one room, to take into consideration said report; and if it shall be determined by a majority of votes in such joint meeting, that the governor or lieutenant-governor elect, obtained his election by bribery, tumult, or other illegal or improper means, the office of the governor or lieutenant-governor elect, so illegally and improperly obtained, as aforesaid shall be vacated and annulled; and it shall, thereupon, be the duty of the president of the senate and speaker of the house of representatives, to issue a writ of election, directed to the sheriffs of the several counties in this state, commanding them to hold an election in their respective counties on any day or days therein mentioned, according to law, to supply the vacancy occasioned thereby: *Provided*, That in every such case, the returns of the election shall be made to the secretary of state, before the adjournment of the general assembly, by whose order such election was held.

Penalty for neglect of duty by any officer lawfully appointed to conduct an election.

SEC. 25. If any sheriff or other officer, lawfully appointed to conduct an election, shall refuse to hold such election, or shall hold the same in any other manner than is directed by this act, or shall refuse or neglect to perform the duties required of him by this act in any respect whatever, such sheriff or other officer, on conviction thereof, before any court of competent jurisdiction, unless in cases herein particularly provided for, shall be fined by the court before whom such conviction is had, in a sum not exceeding one thousand dollars, nor less than one hundred dollars, to be recovered by information, in the name of the presiding justice of the county court, one moiety thereof to be paid into the county treasury of the county wherein the offence shall have been committed, for county purposes, and the other moiety to the informer.

CHAPTER 7.

An act, to change the time of the next meeting of the general assembly, and to organize the two houses thereof, and regulating the duties of tax collectors.

Passed January 21, 1823.

Sessions of the general assembly, when to commence.

SEC. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi in general assembly convened*, That the next and all future sessions of the general assembly, shall commence on the fourth Mondays of December, until otherwise altered by law.

Organization of the senate.

SEC. 2. On a quorum of the senate appearing in the senate chamber, the president of the senate shall have power to administer the oaths required by the constitution and laws of this state,* to the members of the senate, and the secretary and officers of the senate: *Provided*, that if the president does not attend, then any member present may administer such oaths.

(*See chap. 55, sec. 3, and Con. art. VI. sec. 1.)

Organization of the house of representatives.

SEC. 3. On a quorum of the members of the house of representatives appearing in the representative chamber, they shall call some member to the chair, which member shall have power to administer the oaths required by the constitution, and laws of this state, to the members present, after which, any member shall have power to administer the oaths of office to the chairman, Speaker may administer the oaths.

Sec. 4. When the members of the house of representatives shall have elected their speaker, he shall have power to administer the oaths of office to the clerk and other members, who may thereafter appear.

Penalty for failure of assessors and collectors to deposite a list of taxable property, with the auditor of public accounts and county treasurer.

*See chap. 53.

Auditor's duty.

His certificate competent evidence.

Sec. 5. Hereafter, if any assessor and collector of taxes, shall fail to deposite a list of taxable property, in his county, in the office of the auditor of public accounts, and in the office of the treasurer of his county, in the time and manner prescribed by the tenth section of the "Act prescribing the mode of ascertaining and assessing the taxable property within the state, and for collecting the public revenue,"* he shall forfeit and pay the sum of five hundred dollars, for failing so to deposite a list in either of said offices, to be recovered by action of debt, in the name of the governor of the state, for the time being, or the presiding justice of the county court, (as the case may require) in the circuit court of the county, wherein such defaulting assessor and collector may reside, and paid into the treasury of the state, in case the action be brought in the name of the governor, for the use of the state; and if in the name of the presiding justice of the county court, for the use of the county, to be paid into the treasury of the county.—And it shall be the duty of the auditor of public accounts, immediately after the first day of September, in each year, to transmit to the attorney general or any district attorney, in whose district the defaulter may reside, an information of the default of any assessor and collector to deposite a list of taxable property in his office, according to law, and to require the attorney general or district attorney, as the case may be, to prosecute such defaulting assessor and collector, for the forfeiture; and the certificate of the auditor of public accounts shall be competent evidence of such default.

Money collected, to be paid into the treasury by the first Monday of January.

Sec. 6. It shall be the duty of all assessors and collectors of taxes in this state, to pay the moneys by them collected into the treasury of the state on or before the first Monday of January in each year; and hereafter, it shall not be lawful for assessors and collectors of taxes to make distress and sale of the goods and chattels, lands and tenements of delinquents, who shall not have made payment of the taxes due for that year, before the first day of November in each year.

Commencement of the fiscal year.

Sec. 7. Hereafter, the fiscal year shall commence on the first day of January and terminate on the last day of December, in each and every year.

Repealing clause.

Sec. 8. So much of the tenth, fifteenth and twenty-eighth sections of the last mentioned act, and so much of the sixth section of an act, concerning the appointment and duties of the treasurer and auditor of public accounts as are inconsistent with the provisions of this act, be and are hereby repealed.

CHAPTER 8.

An act, concerning the appointment, jurisdiction and powers of justices of the peace, within this state.

Passed June 28, 1822.

Appointment of justices of the peace.

SEC. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi in general assembly convened*, That there shall be appointed and commissioned, by the governor, on the recommendation of the county court, a competent number of justices of the peace, in and for each county in the state, not less than one, nor more than two, in each captain's dictrict, who shall severally take the oath of office prescribed by the constitution;* and shall have and exercise all the jurisdiction, power and authority given and allowed by law, to justices of the peace, not contrary to the constitution of this state: *Provided*, That if the county court of any county shall recommend any person as a justice of the peace, who shall be at the time he is so recommended, disqualified, from any cause whatever, to hold said office, by the constitution and laws of this state, or, if such person shall be manifestly incapable of performing the duties of a justice of the peace, the governor shall have authority, and he is hereby authorized and required to return such recommendation to the county court by which it was made, with his reasons therefor, and the court shall thereupon reconsider the same, and may change or affirm it, as they shall think proper: but if the county court shall persist in recommending any person *disqualified* as aforesaid, it shall be the duty of the governor to withhold the commission from such person, and report the facts in relation thereto, to the next general assembly.

(*See chap. 55, sec. 3.)

Time of continuance in office, and manner of removal from office.

SEC. 2. The justices of the peace who may hereafter be appointed, shall continue in office during the term of three years; but, for any malconduct or misdemeanor in office whatsoever, may be prosecuted by information or presentment of a grand jury, in the circuit court of the county for which he is appointed; which information or presentment shall specify the particular malconduct or misdemeanor with which such justice of the peace shall stand charged, and shall not be quashed, over-ruled or avoided for the want of form. And if the justice of the peace so prosecuted, on the return of a summons executed, shall fail to appear, at the term to which such summons is returnable, and plead to the information or presentment, or shall in open court confess the matter therein alleged, or shall be convicted thereof by the verdict of a jury, the court before whom such prosecution shall be had, shall certify the same to the governor, who, in either of the cases above mentioned, shall forthwith revoke the commission of such justice of the peace, and make known the same to the county court of the county for which he was appointed, and the person so removed shall thereafter be rendered incapable of holding the office of a justice of the peace in any county in this state.

After removal, incapable of holding same office.

Shall be conservators of the peace.

Sec. 3. The justices of the peace of the several counties in this state shall be conservators of the peace within their counties respectively, and shall have power and authority to take all manner of recognizances, with or without security, for good behaviour, to keep the peace, or for appearance at the circuit courts, as the case may be, to answer to charges exhibited, or crimes committed in the view of such justices or any of them, and whereof they have not competent power to hear and determine, and in case any person or persons shall refuse to enter into recognizance as aforesaid, and to find security when thereunto required, it shall and may be lawful for such justice or justices to commit the person so refusing, to jail, there to remain until he shall comply with the order of such justice or justices; and all recognizances for the peace, good behaviour, or appearance at any court, shall be certified before the circuit court of the county to be holden next after the taking thereof, without concealing or detaining the same; and if any person shall forfeit his recognizance of the peace, good behaviour, or appearance, the recognizance so forfeited, with the record of default, or cause of forfeiture, shall be sent and certified without delay, by such justice or justices into such court.

Shall issue warrant to apprehend any person charged with an offence.

Sec. 4. Any justice of the peace now in commission, or who may hereafter be appointed, shall by warrant under his hand and seal cause any person charged on oath of having committed, or being suspected of any felony or other crime or misdemeanor, to be apprehended and brought before him; to commit such person to jail, where the offence is not bailable, or where the offender is either unable or unwilling to give bail to appear and answer to the crime alleged against him or her; to take the recognizance or recognizances of any person charged with any crime not punishable with death, with sufficient security to appear at the next circuit court of his or her county and answer the charge, and the recognizance or recognizances of prosecutors and witnesses, and to issue search warrants for stolen goods, on the oath of some credible person, particularly describing the place suspected and intended to be searched: *Provided*, That in no case whatever, shall any justice of the peace try the right of any property alleged to have been stolen; but in all such cases where the property so alleged to be stolen is claimed by two or more persons, the justice of the peace shall require of the person in whose possession the same was found, to give security for the forthcoming of the property at the next term of the circuit court of the proper county, to abide the judgment, or decision of said court; and in case such person do not give the security so required, then the justice may deliver the property to any other person upon his entering into like bond and security.

Take recognizances of witnesses and prosecutors, and issue search warrants.

Shall take in writing, the voluntary information of the accused and the information of witnesses under oath.

Sec. 5. When any person charged with felony, breach of the peace, or other crime, shall be brought before any justice of the peace, such justice shall immediately proceed to take the voluntary information of the accused in writing, and the information on oath, of all witnesses that appear against him or her, touching the crime alleged to have been committed; and it shall be the duty of said justice to inform the accused of his or her privilege to ask any questions he or she may think proper; which questions, with their answers, shall be reduced to writing by said justice, and it shall be the duty of said justice to send up the recognizance or recognizances of the accused and the prosecutor and witnesses, to the next circuit court of the county on the first day of the term thereof; and any justice failing so to do, shall be fined in a sum not exceeding fifty dollars, to be recovered on motion of the attorney general or district attorney in the circuit court, on reasonable notice of such motion.

Offenders escaping from another county.

Sec. 6. When any person charged with any criminal offence, removes or escapes from the county in which such offence is alleged to have been committed, into another county, it shall be the duty of any justice of the peace of the county to which such person may have removed or escaped, on proof of the hand writing of any justice of the peace of the county where the offence was committed, to endorse any warrant, issued by him, which shall be a sufficient authority for arresting such offender in any place within the jurisdiction of such justice; and such criminal shall be conveyed for examination to some justice of the peace within the county where the offence is charged to have been committed; and subpœnas for witnesses may issue to any county, on the part of the state, where it is necessary for bringing an offender to justice, which shall be executed by any officer authorized to execute process in the county where such witness or witnesses may reside; and any justice of the peace of the county to which any offender may have removed or escaped, on the oath of any credible person, may arrest and have conveyed to the proper county for examination, any person charged with felony or other crime.

Subpœnas may issue to any county on the part of the state.

Justices of the peace may fine and imprison for contempt.

Sec. 7. Any justice of the peace for any contempt, offered to him, while sitting in judgment, shall have power to order, or inflict, or cause to be inflicted, any fine not exceeding the sum of six dollars, and any imprisonment not exceeding six hours; and if any justice of the peace shall offend herein, he shall be deemed guilty of a misdemeanor in office and shall moreover be subject to the action of the party injured, for damages.

Offences cognizable before a justice of the peace, how prosecuted.

Sec. 8. All offences cognizable before a justice of the peace shall be prosecuted by warrant, under the hand and seal of such justice, returnable on a day and at the place therein specified; and the person accused shall have the benefit of counsel in his or her defence, and the privilege of cross-examining witnesses as in other cases of a criminal nature; and when any slave shall be sentenced by a justice of the peace, to receive stripes, or other corporal punishment according to law, such punishment shall be inflicted by the constable, who may be required to do so, by such justice.

Jurisdiction in civil cases.

Original process.

Judgment.

Execution.

SEC. 9. All debts and demands not exceeding fifty dollars, for a sum or balance due on any specialty, note, bond, cotton receipt, contract or agreement in writing, or for goods, wares and merchandize sold and delivered, or for work or labor done, or for money lent, or for specific articles, or for any sum or balance due, either by writing or verbal contract, or assumpsit, in any case not sounding in damages merely, are hereby declared to be cognizable and determinable by a justice of the peace; and any justice of the peace is hereby authorized, on complaint made to him to issue his warrant, *capias*, summons, or attachment, as the case may require, returnable at a certain time and place therein mentioned, not less than ten, nor more than thirty days from the time of issuing the same, and on return thereof, proceed to hear and determine the case on the merits, if the parties appear; give judgment by default, if the defendant fail to appear and contest the plaintiff's demand; or enter judgment of *non suit* against the plaintiff, if he fail to appear and prosecute his claim; and issue execution against the person, or goods and chattels of the party against whom judgment is so entered, for the amount of such judgment and costs, or costs alone, as the case may require, returnable at a certain time and place therein mentioned, not less than twenty, nor more than thirty days from the time of issuing the same; but, such justice, may by consent of parties, or, on good cause shewn by oath or affirmation, adjourn the trial of any cause, to any time not exceeding ten days.

Captain's district in which freeholders or householders shall be sued.

SEC. 10. It shall not be lawful for any person or persons, being free holders or house keepers, to be sued or brought to trial in any civil case, before any justice of the peace without the limits of the captain's district in which such person or persons may reside, or the captain's district in which the debt or demand was contracted or originated, except where there shall be no justice of the peace in the captain's district in which the defendant may reside, or the justice of the peace shall be the defendant; in such cases the defendant may be sued in any of the adjoining captains' districts: *Provided*, That whenever any person shall make oath before any proper officer, that he has good reason to believe that he cannot have justice done him in the district where the defendant resides, or in the district in which the debt was contracted, then it shall be lawful to commence and prosecute suit before any justice of the peace in any one of the adjoining districts.

Cause of action to be endorsed on process.

Parties may be examined on oath.

Sec. 11. It shall be the duty of each and every justice of the peace, at the time he issues his warrant, summons, or capias, against any defendant to endorse thereon the nature and cause of the action, and on the trial thereof, if other satisfactory evidence cannot be had touching the matter in controversy, such justice of the peace may proceed to examine on oath, both plaintiff and defendant, or either of them, and give such judgment as may appear to be just and equitable, according to the evidence adduced, or the statements made on oath as aforesaid by the parties.

Process, how signed, directed and executed.

Entries to be made.

SEC. 12. All warrants and other process issued by any justice of the peace, shall be under the hand and seal of such justice, and shall be directed to the officer whose duty it is to execute the same; and every justice of the peace shall cause fair entries to be made in books to be by him kept for that purpose, of the names of the plaintiff and defendant in any suit brought before him, with the debt and costs adjudged, and the time when the warrant or other process issued, was returnable, and when judgment was given, together with the return made upon all such process, and like entries to be made in books to be kept by him for that purpose, of all proceedings of a criminal nature, which may be heard and determined by such justice of the peace.

Subpœnas for witnesses and commissions for taking depositions.

Penalty for failure to appear according to the command of a subpœna.

SEC. 13. The justice of the peace before whom any cause is depending, shall issue all subpœnas for witnesses who reside within his county, which the parties or either of them require; and in case any witness reside without the limits of his county, such justice may, on satisfactory evidence shewn him that sufficient and reasonable notice has been given to the adverse party of the time and place of taking the deposition of such witness issue a commission to some justice of the peace or notary public of the county in which such witness resides to take his or her deposition; which deposition so taken and returned under the hand and seal of such justice or notary public, shall be read in evidence. And every *subpœna* issued by a justice of the peace, shall be made returnable at a day certain, giving a reasonable time for attendance; and if any witness duly summoned, fail to appear agreeably to the command of such summons or subpœna, he or she so failing, shall be called out on such summons or subpœna, and forfeit the sum of ten dollars, with costs for the use of the county for county purposes, for which, the justice of the peace shall immediately enter judgment *nisi*, against such witness, to be made final in case said witness do not attend within ten days after notice served on said witness of such judgment *nisi*, after the rendition of such judgment, and shew cause for such default, on oath or affirmation, to the satisfaction of said justice.

Bail.

SEC. 14. When any justice of the peace shall issue a capias, the officer arresting any person by virtue thereof, may take a bail bond of the defendant with security, in the penalty of double the amount of the debt or demand, payable to the plaintiff, and conditioned for the appearance of such defendant at the time and place of trial; and in case he or she fail to appear, judgment shall be entered against him or her: but judgment shall not be entered against the bail, until an execution against the defendant shall have been returned by the officer, that the defendant is not found within his county, and until notice shall have been served on such bail, requiring him or her to bring in the body of the principal as in other cases of *scire facias* against bail; but, in case the defendant cannot give bail, or in case the bail surrender him or her before the day of trial, he or she shall be committed to the jail of the county, until he or she satisfy the demand against him or her, or be otherwise discharged by law.

Decision by one justice of the peace to bar a recovery for the same cause of action before another.

Sec. 15. Whenever any suit brought before a justice of the peace, has been finally decided on its merits, by such justice, it shall be a bar to a recovery for the same cause of action, brought before any other justice of the peace; and all justices of the peace before whom any trial shall be had as aforesaid, shall, on application of either of the parties, or their legal representatives, or any other person in his, her, or their behalf, grant a transcript of the record of such judgment, to such party, which shall be sufficient evidence to bar any recovery before any justice of the peace as aforesaid, for the same cause of action.

Transcript of the record to be granted either party, on application.

Stay of execution.

Sec. 16. On all judgments rendered by any justice of the peace, execution shall issue, in like manner as on judgments rendered by any court of record; but if the defendant shall enter into bond with good and sufficient security, payable to the plaintiff, in the penalty of double the amount of such judgment, including interest and costs, conditioned for the payment of the same, it shall be lawful for such justice of the peace, to grant a stay of execution on all sums not exceeding twenty dollars, thirty days; and on all sums over twenty dollars, sixty days; and, in case the money be not paid at the expiration of such stay, execution shall issue against the principal and security, or either of them, for the principal, interest, and all costs, due on such judgment, on which execution no security shall be taken; and all judgments rendered by any justice of the peace, shall bear legal interest from the time of their rendition until paid; and all executions, and summons for garnishees in attachment, shall issue to the county in which such principal, security, or garnishee, may reside, and shall be duly executed and returned by the sheriff, coroner or constable, of the county to which the same is sent.

Interest on judgment.

Executions and summons for garnishees to issue to any county.

Time allowed for appeal.

Sec. 17. In order to give either party an opportunity to appeal, no execution shall issue on the judgment of any justice of the peace, until five days after rendering such judgment, unless the plaintiff, his or her agent or attorney, will make oath, that he or she hath just reason to believe that the plaintiff will be in danger of losing his or her debt or demand by such delay; in which case execution shall issue immediately, and shall operate as a lien upon the property of the defendant, but shall not deprive him or her, of the right of appeal within the time prescribed by law.

[illegible] be entered to the county court.

Sec. 18. If either party in any suit brought before any justice of the peace, shall think himself, herself, or themselves aggrieved by the final judgment of such justice, such party, within five days from the rendition of such judgment, may enter an appeal to the next term of the county court of the proper county, on giving bond, with such security as the justice rendering the judgment shall deem sufficient, payable to the adverse party, and conditioned for the payment of such judgment, and all costs and damages, in case the same shall be affirmed.

Time and manner of trying appeals.

Judgment and execution.

Trial by jury on appeals.

Sec. 19. All appeals granted under this act shall be tried *de novo*, in a summary way, without pleadings in writing, at the term of the court to which such appeal shall be returnable, unless good cause be shewn by either party for a continuance; and the county courts, in rendering judgment thereon, shall govern themselves by the principles of law and equity, and shall hear all the evidence produced by either party, whether the same were produced before the justice from whose judgment such appeal was prayed, or not. And if the defendant be the party praying the appeal, and judgment be rendered for the plaintiff in the original suit, *ten per cent.* damages upon the amount thereof, shall be included in such judgment, and costs; and such judgment shall be entered against the principal and his security jointly, and execution thereon issue accordingly, and be endorsed, *no security to be taken.* And if the judgment of the county court be for the defendant in the original suit, he shall recover full costs. And on all appeals from the judgment of a justice of the peace, the judgment of the county court shall be final. *Provided,* that on all such appeals, when the amount in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved.

Transmission of proceedings to county court.

Remedy of securities.

Sec. 20. Every justice of the peace, from whose decision an appeal is prayed, shall on or before the first day of the term of the county court to which the same shall be returnable, transmit to the clerk of such court, a certified copy of the proceedings had before him in the suit in which such appeal is prayed, together with the original bond given by the appellant: and the clerk shall docket the same, and be entitled to the same fees upon such appeals, as for similar services in a cause originating in said court. And any person or persons, who shall be compelled to pay money under this act as a security, his, her, or their executors and administrators, shall have the same remedy against the principal or principals, his, her, or their executors and administrators, by motion, for the amount so paid, with interest and costs thereon, as other securities are by law entitled to.

Justices of the peace may authorise a person to execute process.

Sec. 21. In case of emergency any justice of the peace may authorise and depute some reputable person to execute any process, although he be not commissioned as a constable; and the sheriff of any county and his deputies, shall execute any process directed to him or them according to law, by any justice of the peace; and the person so deputed, the sheriff and his deputies shall be entitled to the same fees as constables for similar services, and be liable to the same penalties.

Penalty for executing the office of justice of the peace without taking the oath.

Sec. 22. If any person who shall be appointed a justice of the peace, shall presume to execute such office without first taking the oath prescribed in the constitution, which shall be certified on his commission, he shall forfeit and pay the sum of two hundred dollars, one moiety thereof to the use of the county, for county purposes, and the other moiety to him or them, who shall sue for the same, to be recovered, with costs, in any court having cognizance thereof.

When to discharge the duties of coroner.

(*See chap. 45 sec. 3.)

Sec. 23. When there is no coroner within the county, or where the coroner cannot coveniently attend, any justice of the peace may exercise and discharge the duties of coroner, when any person is killed or suddenly dies,* and shall be entitled to the same fees as the coroner.

When to discharge the duties of notary public.

(* See ch. 47.)

Sec. 24. Where there is no notary public, or where the notary public is absent or incapable of acting, any justice of the peace may discharge the duties required of such notary public,* by the laws of this state, for which he shall receive the fees allowed by law for such services.

Compensation of witnesses.

Sec. 25. Every witness summoned, and who shall attend to give evidence before any justice of the peace, shall be allowed the same compensation for his attendance and travelling, as is allowed a witness attending the county court, and such allowance shall be taxed in the bill of costs: *Provided, nevertheless*, That the attendance of not more than one witness to each particular fact, shall be so taxed. Such witness shall be privileged from arrest, in all cases, except treason, felony, and breaches of the peace, in the same manner as witnesses attending courts of record of this state, are.

Proceedings against justices of the peace for retaining money when collected.

Sec. 26. When any justice of the peace shall fail to pay over to the person authorised to receive the same, any money collected by him, in his official capacity, or shall fail to account for and pay into the state or county treasury, as the case may be, according to law, all fines and penalties, which may be assessed by such justice, and paid to him by the person or persons on whom the same shall be assessed, or which shall come into his hands, by any other means whatsoever, on complaint of any such failure to any other justice of the peace of the county, such justice shall issue his warrant or summons, commanding the justice so failing, to appear before him, and if it appear that such justice of the peace has failed to pay over the money collected by him as aforesaid, the justice trying the same, shall enter judgment against such delinquent for the money so detained, with costs and *ten per cent.* damages, and no stay of execution shall be given on such judgment.

To make a return of fines assessed.

Sec. 27. It shall be the duty of every justice of the peace in this state, on the first Monday of January in each year, to make a return to the county treasurer of his county, or to the auditor of public accounts, as the case may require, of all fines and penalties, which he shall have assessed, during twelve months preceding such return, and to pay so much thereof as he shall have received, where the same is directed by law to be paid; and any justice of the peace who shall fail to make such return, or to pay the money by him received as aforesaid, in addition to the remedy prescribed in the preceding section, shall be deemed guilty of a misdemeanor in office, and on conviction thereof, shall be removed from office, in the manner provided by this act.

In certain cases papers to be transferred to the next justice of the peace.

SEC. 28. When any justice of the peace shall die, resign, or remove from the county for which he is appointed, or be removed from office, the books, records and papers, appertaining to his office, shall be transferred to the next justice of the peace in the captain's district, in which he resided; and in case there be no justice of the peace in such district, then to the nearest justice to his place of residence in an adjoining district, who shall finish the business of said justice, in the same manner as business originally commenced by him.

Construction of this act.

SEC. 29. This act shall not be construed to affect the jurisdiction and powers of a justice of the peace, in any suit which shall have been commenced, and is now depending before such justice, but the same shall be proceeded on to final judgment, and execution may issue thereon, or on any judgment previously rendered by any such justice, in like manner as if this act had never been passed.

CHAPTER 9.

An act, to reduce into one, the several acts, concerning last wills and testaments, the duties of executors, administrators and guardians, and the rights of orphans and other representatives of deceased persons.

Passed November 26, 1821.

Court established.

SEC. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi, in general assembly convened,* That a court of probate, shall be held within the several counties of this state, to be styled "The Orphans' Court of the county of ———;" and there shall be, in the manner prescribed by the constitution, an able and learned person, in each county of this state, appointed judge of said court, for taking the probate of wills, and granting letters of administration on the estates of persons deceased, being inhabitants of, or resident in the same county, at the time of their decease, for appointing guardians to minors, idiots, lunatics and persons *non compos mentis*, for examining and allowing the accounts of executors, administrators or guardians: with full jurisdiction of all testamentary, and other matters pertaining to an orphans' court or court of probate, in their respective counties.

Appointment & jurisdiction of judge.

Appointment& duty of register (*See [illegible]p. 10 sec. 3.)

SEC. 2. There shall be in the manner directed by the constitution a suitable person appointed register of the orphans' court,* in each county within this state, who shall take and subscribe an oath or affirmation, in open court, for the faithful discharge of the duties of his office. And it shall be the duty of said register to keep and preserve all records, files, papers and proceedings of the said court; to record all last wills and testaments duly proved and approved; all accounts finally allowed; all inventories and appraisments duly made and sworn to; to issue all citations, subpœnas, and other process as issue of course; and all such as are directed by the court in term time, or the judge in vacation; and to do and perform all those things that appertain to the office of a register of the said orphans' court. And the said register's office shall be under the direction of the court in term time, and of the said judge in vacation.

Removal of judge from office.

Sec. 3. And the said judge of probate shall continue in office during good behavior, and may be removed by an address of two thirds of each house of the general assembly, or by impeachment according to the provisions of the constitution: He shall receive for his services, the sum of five dollars for each day he is actually attending, to hold a court for the purpose of carrying this act into execution, which shall be paid out of the treasury of the proper county, on the certificate of the register of the orphans' court, of the service rendered; and for the other duties which he is required to perform, he shall receive the compensation specified in the general table of fees; and all process, orders and decrees of said court, shall be enforced, executed and returned in the same manner, and under the like penalties as the process, orders and decrees of a circuit court of the state, are enforced, executed and returned. And in case said register shall at any time be unable, from sickness, or other unavoidable causes, to attend said court, it shall be lawful for the judge of probate to appoint a person to act as deputy register, during such inability or absence of the register, who shall take an oath faithfully to discharge the duties of his office; and for all services rendered by the register, he shall be entitled to the fees allowed by law.

Compensation.

Execution and return of process.

Judge may app. deputy register

Register's bond

Sec. 4. The register of the orphans' court in each county, shall, before he enters upon the duties of his office, give a bond in the penal sum of two thousand dollars, with two good and sufficient securities, to be approved by the court of which he is register, payable to the governor of the state, for the time being, and his successors in office, *conditioned*, faithfully to discharge the duties of his office, and seasonably to record all last wills and testaments, and other instruments of writing required by law to be recorded in his office, in a well bound book or books, to be kept for that purpose, and safely to keep all books, papers, records, tables, presses and other things appertaining to his office, and safely deliver such books, papers, presses and other things to his successor in office: which bond shall be recorded in the office of said register, and forthwith deposited by the judge of probate, in the office of secretary of state. And the said bond shall not be void on the first recovery, but may be put in suit and prosecuted from time to time, for the use of any party injured, until the whole sum of the penalty be recovered.

Time of holding court.

SEC. 5. It shall be the duty of the judge of probate, of each county in this state, to hold a court, at the court house of his county, on the fourth Monday in every month, which may continue for four days, if the business to be done, cannot be sooner finished; and the sheriff or coroner, (as the case may require) of the county, shall attend said court, and shall serve all summons, or process to him directed, from the orphans' court of his or any other county within the state, and shall make returns thereof, according to the tenor of the same; and on failure he shall be liable to be proceeded against, in the same manner as for the like failure in other cases.

Sheriff to attend

Special term.

SEC. 6. The judge of probate, in each county, shall be, and he is hereby authorised, as often as he may deem it necessary, to hold a special term of the orphans' court of his county, on ten days' notice being given, by advertisement, at three public places in the county, (of which the court house shall be one;) and at such term, no other business shall be transacted, heard or determined other than that, which shall be particularly mentioned in the advertisement aforesaid.

Court may direct proceeding by bill or petition.

SEC. 7. Whenever either of the parties having a contest in the orphans' court shall require, the said court may direct a plenary proceeding, by bill or petition, to which there shall be an answer, on oath, (or affirmation,) and if the party refuse to answer on oath, (or affirmation, as the case may require,) to any matter alleged in the bill or petition, and proper for the court to decide upon, the said party may be attached, fined and committed, at the discretion of the court, and the matters set forth in said bill or petition, shall be taken *pro confesso*, and decreed accordingly.

Depositions to be recorded.

SEC. 8. And on such plenary proceeding all the depositions shall be taken in writing, and recorded; and in case either party shall require, the court shall direct an issue or issues to be made up, and sent to the circuit court of the same county; and the said issue or issues shall be tried in the said circuit court as soon as may be, without any continuance longer than is necessary, to procure the attendance of a witness or witnesses; and the power of said court, and proceedings relative thereto, shall be, as in other cases, respecting the trial of issues; and the orphans' court shall give judgment, or decree upon the bill and answer, or upon bill, answer, depositions, or finding of the jury; and in all cases of contest, the orphans' court may award costs to the party in their opinion entitled thereto, and may compel payment, by attachment of the body, or of the goods and chattels of the party against whom such costs shall be awarded.

Issues sent to circuit court.

Costs.

Court may summons and enforce appearance.

SEC. 9. The orphans' court in each county, shall, in all cases, have power to issue a summons for any person concerned in the affairs of a deceased person, or for any witness or other person whose appearance in the said court, for any purpose, shall be deemed necessary or proper, and the said summons shall be returnable, at the discretion of the court, at some regular term thereof; and if it be necessary or proper to enforce the appearance of the party, the court, on the return of "summoned" and failure to appear, may issue an attachment; and when the party shall appear, or be brought in thereon, may fine him or her, not exceeding fifty dollars; and if a witness, before the court shall refuse to give evidence, the court may commit him or her to the custody of the sheriff of his or her county, (or coroner, if the case may require,) there to remain until he or she give evidence, or be discharged according to law; and such witness shall moreover be liable to the action of the party, who may sustain any damage by reason of his or her refusing to give evidence, as aforesaid.

Seal.

SEC. 10. The orphans' court in each county shall procure a seal for the said court, which shall be kept by the register thereof; and each orphans' court that hath not already a seal, shall provide the same at the expense of the county, and the said seal shall be fixed to all letters testamentary, of administration and guardianship, to all certificates of the court, or of the register, and to every process and writ of every kind issued from the court.

Allowance.

SEC. 11. The county court of each county shall make allowances of the sums of money necessary for furnishing the register's office with books, presses and tables, to be paid out of the county treasury of each county, respectively.

Appeals, how taken and proceedings thereon.

SEC. 12. Any person who may conceive him or herself aggrieved by any judgment, decree, decision, or order of the orphan's court, shall have the liberty of appealing to the court of chancery, or supreme court of the state, upon the appellant's giving bond, with good and sufficient security, approved of by the said court, and in such sum as they shall direct, to the judge thereof: *Conditioned*, That the appellant shall prosecute the said appeal to effect, and perform the sentence, judgment, or decree, which the said court of chancery, or supreme court, shall make therein in case the cause be decided against him or her; which bond may be put in suit in the name of the said judge of probate, and the amount recovered thereon, applied as the said orphans' court shall direct, among those injured by breach of the condition thereof. If the judgment, decree, decision or order, of the orphan's court shall have been given or made on a summary proceeding, and on the testimony of witnesses, the party shall not be allowed to appeal, unless, he or she shall immediately notify his or her intention, and request that the testimony be reduced to writing, and in such case, the depositions shall be, at the cost of the party in the first instance, reduced to writing; and a transcript of the whole proceedings relating immediately to the matter, shall be made out by the register of said court, and certified by him under seal, and transmitted to the said appellate court by the party within thirty days from the date of the decision or order, otherwise the said party shall lose the privilege of appeal; and if the decision of the orphans' court be in a summary way, and on papers filed in the court, no party shall be entitled to appeal, unless he or she enter the appeal within three days, and transmit a certified copy of the proceedings as aforesaid within thirty days aforesaid; but in case there shall have been plenary proceedings as aforesaid, either party may prosecute the appeal by entering the same as aforesaid, and by transmitting a certified copy as aforesaid within sixty days from the date of the decree, judgment, decision, or order; and in the said appellate court, the appeal so carried up, shall stand for hearing and decision at the term next succeeding the transmission of the proceedings, and the said court shall, at the said term or as soon as conveniently may be, either affirm the decree, judgment, decision, or order of the court below, or direct in what manner it shall be changed or amended, or may at their discretion, direct an issue or issues in fact to be made up and tried by the circuit or superior court of the proper county, as in other cases; and when the decision of such appellate court, shall be certified, under the seal, by the clerk of such court, and transmitted to the orphans' court, the said orphans' court, shall proceed according to the tenor or directions thereof, and the same shall be final and conclusive between the parties.

Register to make out a transcript.

Issues in fact may be directed.

SEC. 13. If letters testamentary, of administration, or guardianship, be granted by the orphans' court, and the party contesting the same, shall appeal to the court of chancery or supreme court, according to the provisions of the preceding section, it shall be the duty of the said orphans' court, to appoint a fit person, to act as administrator, with the will annexed, if there is no executor legally qualified under the will of the testator, or an administrator of the estate of the intestate, or guardian, as the case may be, who shall take charge of the estate of the testator, intestate, or minor, until the final decision of the appeal; and the person so appointed, shall give the like security, take the oath, and perform the duties, which are required of an executor, administrator, or guardian, by this act. And as soon as the judgment, sentence, or decree of the court of chancery or supreme court shall be certified in manner aforesaid, to the orphans' court, all the estate, both real and personal, and all papers of every description whatsoever, in the hands or possession of the administrator, with the will annexed, or administrator of the estate of the person dying intestate, or guardian appointed as aforesaid, shall be delivered to the person in whose favor such appeal is decided, after he or she shall have complied with the requisitions of this act, and obtained an order of the orphans' court, for that purpose; in which case the powers and duties of

Proceedings when appeals are taken on granting letters.

the temporary administrator with the will annexed, or administrator of the estate of an intestate or guardian of a minor, as the case may be, shall cease and determine.

Who may make a will and its requisites.

SEC. 14. Every person aged twenty-one years, if a male, or aged eighteen years if a female, or upwards, being of sound and disposing mind, and not a married woman, shall have power, at his or her will and pleasure by last will and testament, or codicil in writing, to devise all the estate, right, title and interest in possession, reversion or remainder, which he or she hath, or at the time of his or her death shall have, of, in or to lands, tenements, hereditaments or annuities or rents charged upon, or issuing out of them, or goods and chattels and personal estate of every description whatsoever, so as such last will and testament be signed by the testator, or by some other person in his or her presence, and by his or her express directions; and moreover if not wholly written and subscribed by himself, or herself, be attested by three or more credible witnesses, in case of the devise of real estate, and one or more credible witnesses, in case of the devise of goods and chattels and personal estate, in presence of the testator; saving however, to the widows of testators, their dower in any estate real or personal, so devised.

How revocable.

SEC. 15. No devise so made, or any clause thereof, shall be revocable, but by the testator or testatrix, destroying, cancelling or obliterating the same, or causing it to be done in his or her presence, or by a subsequent will, codicil or declaration in writing, made as aforesaid. But every last will and testament, made when the testator had no child living, wherein any child he might have, is not provided for, or not mentioned, if at the time of his death, he leave a child, or leave his wife *enseint* of a child, who shall be born, shall have no effect during the life of such afterborn child, and shall be void, unless the child die without having been married, and before he or she has attained the age of twenty-one years; and the estate both real and personal, so devised, shall descend to such child, in the same manner, as if the testator had died intestate; subject nevertheless, to the bequests made in said last will and testament, in case of the death of such child before he or she be married, or arrive at the age of twenty-one years. And when a testator shall leave children born and his wife *enseint*, the posthumous child or children, if unprovided for, by settlement, and neither provided for nor disinherited, but only pretermitted, by the last will and testament, shall succeed to the same portion of the father's estate, as such child or children, would have been entitled to, if the father had died intestate, towards raising which portion the devisees and legatees shall contribute proportionably, out of the parts devised and bequeathed to them by the same will and testament.

Children born after will is made.

Further provision for children born after will is made.

SEC. 16. If a testator, having a child or children, born at the time of making and publishing his last will and testament, shall, at his death, leave a child or children, born after the making and publishing of his said last will and testament, the child or children so afterborn, if such child or children be unprovided for by settlement, and be neither provided for nor disinherited, but only pretermitted by the last will and testament, shall succeed to the same portion of the father's estate as such child or children would have been entitled to, if the father had died intestate; towards raising which portion, the devisees and legatees shall contribute proportionably, out of the parts devised and bequeathed to them by the same will and testament, in the same manner as is provided in the case of posthumous children.

Heirs of devisee or legatee.

SEC. 17. Whensoever any estate of any kind shall or may be devised or bequeathed by the last will and testament of any testator or testatrix, to any person being a child or other descendant of such testator or testatrix, and such devisee or legatee shall during the life-time of such testator or testatrix, die, testate or intestate, leaving a child or children or one or more descendants of a child or children, who shall survive such testator or testatrix; in that case, such devise or legacy, to such person so situated as above mentioned, and dying in the life time of the testator or testatrix, shall not lapse; but the estate so devised or bequeathed, shall vest in such child or children, descendant or descendants of such legatee or devisee, in the same manner as if such legatee or devisee had survived the testator or testatrix and had died unmarried and intestate.

Nuncupative wills.

SEC. 18. No nuncupative will shall be established, unless it be made in the time of the last sickness of the deceased, at his or her habitation, or where he or she hath resided for ten days next preceding the time of his or her death, except where such person is taken sick from home, and dies before his or her return to such habitation; nor where the value bequeathed exceeds one hundred dollars, unless it be proved by two witnesses, that the testator or testatrix called on some person present to take notice, or bear testimony, that such is his or her will, or words of the like import.

After what time barred.

SEC. 19. After six months have elapsed from the time of speaking the pretended testamentary words, no testimony shall be received to prove a nuncupative will, unless such words, or the substance thereof, shall have been reduced to writing, within six days after speaking the same.

Probate, after what time taken

SEC. 20. No probate, of any nuncupative will shall be taken, or letters testamentary granted thereon, until after the expiration of fourteen days, from the time of the decease of the testator or testatrix, nor until the widow, if any, and next of kin, if resident in this state have been summoned to contest the same, if they think proper.

Bequests of soldiers and mariners.

SEC. 21. Any soldier in actual military service, or any mariner or seamen being at sea, may dispose of and bequeath his goods and chattels, as he might heretofore have done; any thing in this act contained to the contrary notwithstanding.

Court may compel production of will.

SEC. 22. If the orphans' court of any county in this state, shall be informed that any person hath the last will and testament of a testator or testatrix, such court is hereby authorised to compel such person to produce the same; and if any person to whom a will or codicil hath been or shall be delivered by the party making it, for safe custody, shall alter or destroy the same, without the direction of the said party, or wilfully secrete it for the space of six months after the death of the party shall be known to him or her, on conviction thereof the person so offending shall be sentenced to such punishment as is inflicted by law in cases of grand larceny.

Will to be recorded.

SEC. 23. All original wills, after probate thereof, shall be recorded and remain in the register's office of the court wherein they were respectively proved, except during such time as they may be in the court of chancery or supreme court, having been removed thither for inspection by *certiorari* or otherwise; after which they shall be returned into the said office; and an authenticated copy of any will, testament or codicil, recorded in any office authorized to record the same, shall be admitted as evidence in any court of law, or equity in this state.

In what county to be proved.

SEC. 24. The orphans' court of each county in this state shall have power to hear and determine all causes, matters and controversies testamentary, arising within their respective jurisdictions, and to examine and take the proof of wills, and grant letters testamentary thereon according to the provisions of this act: If any testator or testatrix shall have a mansion house, or known place of residence, his or her will shall be proved in the orphans' court of the county, wherein such mansion house or place of residence is; if he or she have no place of residence, and lands be devised in the will, it shall be proved in the orphans' court of the county wherein the lands lie, or in one of them, where there shall be lands in several counties; and if he or she have no such known place of residence, and there be no lands devised, then the will may be proved either in the orphans' court of the county where the testator or testatrix shall die, or that wherein his or her estate or the greater part thereof shall be.

Copies of wills from other states.

SEC. 25. Authenticated copies of wills, proved according to the laws of any of the United States, or the territories thereof, or of any country out of the limits of the United States, and touching or concerning estates within this state, may be offered for and admitted to probate in the said courts; but such will shall be liable to be contested and controverted in the same manner as the original might have been.

Executors therein named how appointed.

SEC. 26. All persons named as executors in any such will, shall, after the copy thereof has been admitted to record as above directed, be entitled to letters testamentary, in the same manner as if the original will had been proved in such court. And where there shall be no executors named in the said will, or the executors therein named, shall, all of them refuse the executorship, the court shall have the same power and authority to hear and determine the right of administration, and to grant letters of administration with the will annexed as if the original will had been proved in court.

When a subscribing witness a devisee.

SEC. 27. If any person shall be a subscribing witness to a will wherein any devise or bequest is made to such subscribing witness, and the will cannot be otherwise proved, the devise or bequest to such witness shall be void, and he or she compellable to appear and give testimony on the residue of the will in the like manner as if no such devise or bequest had been made. But if such witness would have been entitled to any share of the testator's estate, in case the will was not established, then so much of such share shall be saved to such witness, as shall not exceed the value of the said devise and bequest made to him or her in the said will.

When a subscribing resides out of the state.

SEC. 28. It shall be lawful for any orphans' court, when any will shall be produced to them for probate, and any witness attesting the same, shall reside out of the state, to issue a commission or commissions annexed to such will, and directed to the presiding judge of any court of law, or to any notary public, mayor or other chief magistrate of any city, town corporation or county, where such witness may be found, authorizing the taking and certifying his or her attestation. If the person to whom any such commission shall be directed, shall certify in the manner such acts are usually authenticated, that the witness personally appeared before him and made oath, or solemn affirmation, (as the case may require,) that the testator or testatrix signed and published the writing annexed to such commission, as his or her last will and testament, or that some other person signed it by his or her direction, that he or she was of disposing mind and memory, and that he or she subscribed his or her name thereto, in the presence of the testator or testatrix, and at his or her request, such oath or affirmation shall have the same operation, and the will be admitted to probate in like manner, as if such oath or affirmation had been made in the court from whence such commission issued.

In what time validity of will contested.

SEC. 29. When any will shall be exhibited to be proved, the court having jurisdiction as aforesaid, may proceed immediately to receive the probate thereof, and grant letters testamentary. If however, any person interested, shall within five years afterwards, appear and by his or her bill in chancery contest the validity of the will, an issue shall be made up, whether the writing produced be the will of the testator or testatrix, or not, which shall be tried by a jury in the circuit or superior court of the county wherein such will shall have been recorded, or in the court of chancery, as the chancellor shall direct, whose verdict shall be final between the parties, saving to the court a power of granting a new trial, for good cause as in other trials; but no such party appearing within that time, the probate shall be forever binding; saving also to infants, *femes covert*, and persons absent from the state, or *non compos mentis*, the like period after the removal of their respective disabilities.

Certificate of oath.

Sec. 30. In all such trials by jury, the certificate of the oath of the witnesses, at the time of the first probate, shall be admitted as evidence, to have such weight as the jury shall think it deserves.

Proceedings when executor named in a will refuses to act

Sec. 31. If the executors named in any last will and testament, renounce the executorship, or being required to give security, shall all refuse or fail to give the same (which shall amount to a refusal of the executorship,) or shall refuse or neglect for the space of forty days after the death of the testator or testatrix, to exhibit such will and testament for probate, then administration of the goods and chattels, rights and credits of such testator or testatrix with the will annexed, shall be granted to the widow, if any, or the next of kin of such testator or testatrix, or to some of them; and in case of their, and each of their refusal, then to a principal creditor or creditors of such testator or testatrix: and if none of them will accept thereof, then to such other proper person or persons as will accept the same: *Provided*, That each executor named in such last will and testament, who shall not have renounced the executorship, if within the state, shall, before granting letters of administration, with the will annexed as aforesaid, be summoned to shew cause why the same should not be granted; and if any executor or executors, be absent from the state at the time of the probate of the last will and testament in which he or they are named, and letters of administration with the will annexed, should be granted during his or their absence, such executor or executors shall be allowed the term of sixty days, after his or their arrival in the state, to make application to the orphans' court for the executorship of such last will and testament, and on his or their complying with the requisitions of this act, letters testamentary shall be granted to him or them, and the letters of administration, with the will annexed, shall in that case, be revoked, and the estate both real and personal of the testator or testatrix shall thereafter be disposed of according to the said last will and testament by the executor or executors, so returning and applying for the executorship as aforesaid.

When absent.

Duty of admrs. with the will annexed.

Sec. 32. And in all cases where letters testamentary shall be granted as aforesaid, it shall be the duty of the administrator or administrators with the will annexed, to exhibit to the orphans' court his or their accounts, without delay; and to deliver to the executor or executors, on demand, all the goods, chattels and personal estate, in his or their possession, belonging to the deceased; and on failure, his or their administration bond shall be liable to be put in suit by the executor or executors, who may obtain an order of the orphans' court for the purpose.

Sec. 33. Before granting letters testamentary or letters of administration with the will annexed, the executor or executrix, administrator or administratrix with the will annexed (as the case may be,) shall in open court, take the following oath, viz. "You shall swear that this writing contains the true last will of the within named ————, as far as you know or believe; and that you will well and truly perform the same, by paying first his (or her) debts, and then the legacies contained in the said will, as far as his (or her) goods, chattels and credits will extend, and the law charge you; and that you will make a true and perfect inventory of all the said goods, chattels and credits, as also a just account when thereto required." And shall also give bond in such penalty as will be equal to the full value of the estate at least, and with such security as shall be approved of by the court with the following condition, viz:

Their oath.

Bond.

"The condition of this obligation is, that if the said ———— ———— executor or executrix of the last will and testament or administrator or administratrix with the will annexed, of all the goods, chattles and credits) of ————, deceased, do make a true and perfect inventory of all and singular the goods, chattels and credits of the said deceased, which have or shall come to the hands, possession or knowledge of ————, the said ————, or into the hands or possession of any other person or persons for ————, and the same so made, do exhibit to the orphans' court of ———— county, at such time as ———— shall be thereto required by the said court and the same goods, chattels and credits do well and truly administer according to law, and make a just and true account of —— actings and doings therein, when thereunto required by the said court; and further do well and truly pay and deliver all the legacies contained and specified in the said will, as far as the said goods, chattles and credits will extend, according to the value thereof, and as the law shall charge ————; then this obligation to be void, or else to remain in full force." Which bond shall be payable to the judge of probate of the proper county and his successors in office, and shall not become void upon the first recovery, but may be put in suit and prosecuted from time to time, by and at the costs of any party injured by a breach thereof, until the whole penalty be recovered thereupon: and such bond shall be recorded in the office of the register of the orphans' court, and a certified copy thereof, under the seal of said court, shall be received in evidence in any court of law or equity in this state.

Condition.

To whom payable, &c.

Sec. 34. But where any testator or testatrix shall leave visible estate more than sufficient to pay all his or her debts, and by will shall direct, that his or her executors shall not be obliged to give security, in that case no security shall be required,

When executor not compelled to give security.

unless the court shall see cause, from their own knowledge, or the suggestions of creditors or legatees, to suspect the executors of fraud, or that the personal estate will not be sufficient to discharge all the debts, and shall require security, when the same shall be given, before letters testamentary shall be granted, notwithstanding any directions to the contrary in the will.

Executor or executrix when disqualified.

SEC. 35. If any person named as an executor or executrix in a will, shall be at the time when administration ought to be granted, under the age of eighteen years, or of unsound mind, incapable according to law of making a contract, or convict of any crime, rendering him or her infamous, according to law, letters testamentary, or of administration, (as the case may require) may be granted, in the same manner as if such person had not been named in the will: and on all questions touching such disqualifications, the court shall receive the like testimony as would be admissible in a court of law or equity in similar cases.

At what age qualified.

SEC. 36. The age of eighteen years shall be considered the age of majority of an executor or executrix named in any last will and testament; and in case letters testamentary shall be granted to an executor or executrix above eighteen and under twenty-one years of age, the bond by him or her executed, for faithful performance, shall be binding, as if he or she were of full age; and no married woman shall be entitled to letters testamentary, but the same or letters of administration shall be granted in the same manner as if she had not been named in the will; unless her husband, shall with two good and sufficient securities, give bond as aforesaid, to be recorded and sued as aforesaid, for her faithful performance.

Administrator ad colligendum

SEC. 37. During any contest about a will, or during the infancy, or in the absence of an executor or executrix, or until a will, which may have once existed, but is destroyed, shall be established, the court may appoint any person or persons to collect and preserve the estate of any decedent, until a probate of his will, or *durante minore ætate*, or until administration of his estate be granted; taking bond and security, for collecting the estate, making an inventory thereof, and safe keeping and delivering up the same, when required, to the executors or administrators.

Form of letters administration.

SEC. 38. The form of the letters to be granted to the person or persons so appointed shall be as follows: "The state of Mississippi, to all to whom these presents shall come greeting.—Know ye, that whereas of deceased, as it is said, had at his (or her) decease, personal property within this state, the administration whereof cannot immediately be granted, but which, if speedy care be not taken, may be lost, destroyed or diminished; to the end, therefore, that the same may be preserved for those who shall appear to have a legal right or interest therein, we do hereby request and authorise of to secure and collect the said property, wheresoever the same be in this state, (or in county or counties,) whether it be goods, chattels, debts or credits, and to make, or cause to be made, a true and perfect inventory thereof, and to exhibit the same, with all convenient speed, together with a reasonable account of his collection, into the office of the register of the orphans' court of the county of

Witness (A. B.) judge of probate of county. (C. D.) register."

Sec. 39. Before letters to collect as aforesaid, shall be granted, the party shall give bond, with approved security, to be filed, recorded and sued as aforesaid, in such penalty as the court shall direct; and the condition thereof shall be as follows: "The condition of the above obligation is such, that if the above bounden shall well and honestly discharge the office of collector of the goods, chattels and personal estate, and debts of deceased, in the state of Mississippi (or county or counties,) and shall make, or cause to be made, a true and perfect inventory or inventories of such of the said goods, chattels, personal estate and debts, as shall come to his or her possession or knowledge, and the same in due time return to the office of the register of the orphans' court of county, and shall also deliver to the person or persons who shall be authorised, by the orphans' court of the said county, to receive them, such of the said goods, chattels, personal estate and debts, as shall come to his (or her) possession; (except such as shall be allowed for by the said court,) then the above obligation to be void, or otherwise to remain in full force and virtue." And every collector as aforesaid shall be required, on granting the said letters, to take the following oath, or affirmation as the case may require: "You do swear (or affirm) that you will well and honestly discharge the office of collector of the goods, chattels, personal estate and debts of deceased, according to the tenor of the letters granted to you, by the orphans' court of county, and agreeably to the directions of law, to the best of your knowledge: so help you God."

Bond.

Condition.

Oath.

Sec. 40. Every collector so appointed, shall have power to collect the goods, chattels, personal estate and debts, according to the tenor of the said letters, and to secure the same at such reasonable, and necessary expense, as shall be allowed by the court; and the court may authorise him, immediately after appraisment, to sell such as shall be perishable, or not to be preserved, and to account for the same; and for the whole trouble incurred by a collector, the court may allow a commission on the amount of the property and debts actually collected, and afterwards delivered to an executor or administrator, as to the court shall seem just, not exceeding five *per cent.* or the court

Duties of adm'r. ad colligendum

Commission allowed.

may allow a commission on the whole inventory not exceeding three *per cent.*

Power to sue &c.

SEC. 41. Every collector appointed as aforesaid shall have power to bring suit for debts due to the decedent, and to release the same on payment thereof; and no such suit shall abate by the revocation of the letters of such appointee, or collector, but the same shall be prosecuted to a final decision by the executor or executors, administrator or administrators, to whom letters testamentary or of administration may be granted.

To deliver property to successor.

SEC. 42. On the granting of letters testamentary, or of administration, the power of any such collector shall cease, and it shall be his duty to deliver, on demand, all the property and money of the deceased, in his hands or possession, except as before excepted, to the person or persons obtaining such letters; and in case of the collector evading such demand, or refusing or neglecting to deliver according to such demand, made at a reasonable time and place, either the court may proceed against him by attachment, and impose a fine not exceeding ten per cent. on the amount of property in his hands, or his bond may be sued by the person or persons to whom letters testamentary or of administration may be granted.

Penalty for neglect.

Estate not devised.

SEC. 43. All such estate, both real and personal, as is not devised or bequeathed in the last will and testament of any person, shall be distributed in the same manner as the estate of an intestate; and the executor or executors, administrator or administrators with the will annexed (as the case may be) shall administer the same accordingly.

Creditor may be a witness.

SEC. 44. If lands, tenements, or hereditaments shall be charged with any debt or debts, by any will or codicil; and the creditor whose debt is so secured shall attest the execution of such will or codicil, such creditor may notwithstanding be admitted as witness of the execution thereof.

Devise to wife bar of dower.

SEC. 45. Every devise of land, or any estate therein, or bequest of personal estate, to the wife of the testator, shall be construed to be intended in bar of her dower in lands, or share of the personal estate, respectively, unless it be otherwise expressed in the will.

Dower barred after 6 months.

SEC. 46. A widow shall be barred of her right of dower in land, or share in the personal estate, by any such devise or bequest, unless within six months after the authentication or probate of the will she shall deliver, or transmit to the court where such authentication or probate hath been made, a written renunciation in the following form, or to the following effect:

Form of renunciation

"I, A. B. widow of late of deceased, do hereby renounce and quit all claim to any bequest or devise made to me by the last will of my husband, exhibited and proved according to law; and I elect to take, in lieu thereof, my dower, or legal share of the estate of my said husband. A. B.'' But by renouncing all claim to a devise or bequest, or devises or bequests, of personal property, made to her by the will of her husband, she shall be entitled to her legal share of the personal estate of her husband, which shall remain after payment of his just debts and claims against him, and no more.

SEC. 47. If the will of the husband devise a part of both real and personal estate, she shall renounce the whole, or be otherwise barred of her right of both real and personal estate. Whole devise to be renounced

SEC. 48. If the will devise only a part of the real estate, or only a part of the personal estate, the devise shall bar her of only the real or personal estate, as the case may be: *Provided, nevertheless*, That if the devise of either real or personal estate, or of both shall be expressly in lieu of her legal share of one or both, she shall accordingly be barred unless she renounce as aforesaid. But if in effect, nothing shall pass by such devise, she shall not be thereby barred, whether she shall or shall not renounce as aforesaid, it being the intent of this act, and consonant to justice, that a widow accepting, or abiding by a devise, in lieu of her legal right, shall be considered as a purchaser with a fair consideration. Dower how affected by partial devise.

SEC. 49. If a widow commit waste in the lands of the deceased, she shall be liable to an action by the heir or devisee, or his or her guardian, and if she marry a second husband, he shall be answerable for any waste committed by her before marriage, or by himself afterwards. Widow liable for waste.

SEC. 50. When any person shall die seized of any estate of inheritance, in lands, tenements or hereditaments, not devised, the same shall descend to his or her children and their descendants, in equal parts; the descendants of the deceased child or grand-child to take the share of the deceased parent in equal parts among them; and when there shall be no children of the intestate, nor descendants of such children, then to the brothers and sisters of the intestate and their descendants, in equal parts; the decendants of a brother or sister of the intestate to have in equal parts among them, their deceased parents' share; and when there shall be no children or descendants of them or any of them, then to the father if he be living; if not, to the mother of the intestate; and if there be no children of the intestate or decendants of such children, and no brothers or sisters or descendants of them, nor father or mother, then such estate shall descend in equal parts to the next of kin to the intestate, in equal degree, computing by the rules of the civil law; and there shall be no representation among collaterals, except with the descendants of the brothers and sisters of the intestate; and there shall in no case be a distinction between the kindred of the whole, and half blood, except the kindred of the whole Descents.

Widow's dow'r

blood in equal degree, shall be preferred to the kindred of the half blood in the same degree; saving to the widow of the intestate in all cases her dower. And where there shall be no children of such intestate, nor descendants of them, then the widow shall have as her dower, one half of such before-mentioned estate of her deceased husband.

Hotchpot proceedings thereon.

SEC. 51. Where any of the children of a person dying intestate, or their issue shall have received, from such intestate in his life time, any real or personal estate, by way of advancement, and shall choose, to come into the partition and distribution of the estate with the other parceners and distributees; such advancement, both of real and personal estate shall be brought into hotchpot with the whole estate real and personal descended; and such party returning such advancement as aforesaid, shall thereupon be entitled to his, her or their proper portion of the whole estate so descended, both real and personal: *Provided*, That when an infant having title to personal estate shall die before attaining to the age when one may legally bequeath that kind of property, or after obtaining such age, shall die without bequeathing it, those of his or her kindred shall succeed to the said infant, who would have succeeded, if he or she had been at the time of his or her death, of the age of twenty-one years.

Distribution of personal estate.

SEC. 52. When any person shall die possessed of goods and chattels or personal estate not bequeathed, the same shall descend to and be distributed among his or her heirs in the same way and manner that real estates not devised descend by this act: *Provided*, That the goods, chattels, or personal estate of any person deceased, whether testator or intestate, shall stand chargeable with the payment of all the just debts and funeral expenses of the deceased, and the charges of settling the said estate; and after the payment thereof, the surplusage, in case of intestacy, shall be decreed by the orphans' court to the persons entitled to distribution thereof according to the provisions of this act: and the lands, tenements and hereditaments of the testator or intestate, shall stand chargeable with all the debts of the deceased, over and above what the personal estate shall be sufficient to pay as aforesaid, saving to the widow, her dower, in all cases.

Lands chargeable with debts if personal estate insufficient.

Children born before marriage provided for.

SEC. 53. If any man shall have one or more, children by any woman, whom he shall afterwards marry, such child or children, if acknowledged by the man, shall in virtue of such marriage and acknowledgment be hereby legitimated and capable in law to inherit and transmit inheritance as if born in wedlock.

Administration in what county granted, and to whom.

SEC. 54. The granting of letters of administration of the estate of any intestate, and the hearing and determining the right of the same, shall pertain to the orphans' court of the county, in which the intestate had at the time of his or her death, a mansion-house, or known place of residence. And if he or she shall have no such known place of residence, then to the orphans' court of the county where the intestate shall die or of that wherein his or her estate, or the greater part thereof, shall be: and such court shall grant letters of administration to the representatives who apply for the same; preferring first the husband or wife, and then such others as are next entitled to distribution, or one or more of them, as the court shall judge will best manage and improve the estate. And if no such person apply for administration, within sixty days from the death of an intestate, or at the next succeeding court after the expiration thereof, the court may grant administration to any creditor or creditors who apply for the same, or to any other person the court shall, in their discretion, think fit.

Administration revoked on production of will, and letters testamentary granted.

SEC. 55. If such letters of administration be granted, and a will for the disposing of the estate of the deceased shall afterwards be proved according to law, and an executor or executors, named therein, shall apply for letters testamentary within sixty days thereafter, and shall be capable of the same, and shall execute a bond as aforesaid, letters testamentary shall be accordingly granted; and the same shall be construed as a revocation of the letters of administration: *Provided, nevertheless*, That all acts done by any administrator or administratrix according to law, before any actual or implied revocation of the letters of administration, shall be valid and effectual: *And provided*, That the executor or executors, so obtaining letters testamentary, shall thereby be authorised to prosecute any actions at law or equity, commenced by the administrator or administrators, and to obtain judgment in his, her or their own names, and likewise to defend any suit as aforesaid, commenced against the said administrator or administrators; and the granting letters testamentary in such case shall not be construed to affect any suit, as aforesaid, commenced against the administrator or administrators, but the plaintiff or plaintiffs shall be allowed to prosecute the same unto judgment; nor shall the granting such letters testamentary be construed to affect any suit brought by the administrator or administrators, but the same shall be prosecuted unto judgment, unless the executor or executors shall come into court, and pray that the same be struck off, or discontinued; and the executor or executors shall have the benefit of all judgments obtained by the administrator or administrators, and shall be bound by all judgments obtained against them: and with respect to the allowance of costs, all administrators shall be on the same footing as if letters testamentary had not been granted; and the same rules in making the executor or executors, plaintiffs or defendants shall be observed as are directed and established in other cases.

Further provisions.

Oath of administrator.

SEC. 56. Before granting letters of administration of any estate, the person, or persons to whom the same is granted, shall in open court, take the following oath, to wit: "You shall swear that deceased, died without any will, as far as

Bond

Condition.

To whom payable.

Where recorded, &c.

you know or believe, and that you will well and truly administer all and singular the goods, chattels and credits of the said deceased, and pay his debts, as far as his goods, chattels and credits will extend, and the law require you; and that you will make a true and perfect inventory of all the said goods, chattels and credits, as also a just account when thereto required, so help you God," And shall also give bond in a penalty, at least equal to the value of the estate, and with such security as shall be approved by the court, with the following condition, to wit: "The condition of this obligation is, that if the said administrator of the goods, chattels and credits of deceased, do make a true and perfect inventory of all and singular the goods, chattels and credits of the said deceased, which have or shall come to the hands, possession or knowledge of the said or in the hands or possession of any other person or persons for and the same so made, do exhibit into the orphans' court of county, when he shall be thereunto required by the said court; and such goods, chattels and credits, do well and truly administer, according to law; and further do make a just and true account of his actings and doings therein, when thereto required by the said court; and all the rest of the said goods, chattels and credits, which shall be found remaining upon the account of the said administrator, the same being first examined and allowed by the said court, shall deliver and pay unto such persons respectively as are entitled to the same by law; and if it shall hereafter appear, that any last will and testament was made by the deceased, and the same be proved in court, and the executor or executors obtain letters testamentary, and the said do in such case being required, render and deliver up his letters of administration; then this obligation to be void, else to remain in full force." Which bond shall be payable to the judge of probate of the proper county, and his successors in office, and shall not become void upon the first recovery, but may be put in suit and prosecuted in the like manner as is before directed in the case of bonds to be given by executors or administrators with the will annexed. And such bond shall be recorded in the office of the register of the orphans' court, and a certified copy thereof, under the seal of said court, shall be received in evidence in any court of law or equity in this state.

Executors not liable for mispleading.

SEC. 57. But no executor or administrator, or security for any executor or administrator shall be chargeable beyond the assets of the testator or intestate, by reason of any omission or mistake in pleading, or false pleading of such executor or administrator.

Bond of ex'rs. how put in suit.

SEC. 58. In case a bond given by any executor, administrator or collector, under this act, become forfeited, it shall and may be lawful for the judge of probate, to cause the same to be prosecuted, at the request of any party grieved by such forfeitures; and the monies recovered upon such bond shall be applied to wards making good the damages sustained by the not performing the condition thereof in such manner as the orphans' court, by their sentence or decree shall direct.

Adm'r de bonis non when appointed.

SEC. 59. In case any executor or administrator shall die before the estate shall be fully administered, letters of administration *de bonis non* shall be granted to the person entitled agreeably to the rules herein before laid down, and the proceedings shall in all respects be the same as if administration had been originally granted; and in no case shall the executor of an executor be entitled, as executor, to administration *de bonis non* of the first deceased; but the letters, bond and oath, of an administrator *de bonis non*, shall be in the form herein before directed, except that the words, "not already administered," shall be added in the proper places.

Persons disqualified as administrators.

SEC. 60. No letters of administration shall be granted to a person under the age of twenty-one years, or of unsound mind, incapable according to law of making a contract, or convict of any crime rendering him or her infamous according to law; and any question respecting age, soundness of mind, or infamy as aforesaid, may be heard and determined as if the same respected a person named as an executor.

Questions respecting age or infamy, how determined.

SEC. 61. No question respecting age or infamy shall be determined by the orphans' court, without summoning the person named in a will as an executor, or entitled to administration, and alleged to be under age or infamous; provided he or she be within the state, or without giving such notice by advertisement or otherwise, as the court shall direct, in case he or she be out of the state, and hearing, in case the party shall attend agreeably to such summons or notice.

Application of this act.

SEC. 62. All the provisions of this act, relative to an executor or administrator shall apply and extend to an executrix or administratrix, or executors or administrators, respectively, unless otherwise expressly provided for; and whenever any party in the singular number, or a male party is mentioned, the rule shall apply to a female, or to two or more, having a joint interest or jointly concerned, applying or called upon, so far as the rule can with propriety apply, or so far as is not otherwise directed.

Letters testamentary etc. may be superseded in certain cases.

SEC. 63. If any executor of any last will and testament, or administrator of an intestate estate, residing out of this state, at the time of taking that trust, or afterwards removing out of this state, shall refuse or neglect, after due notice from the orphans' court, to render his accounts, and make settlement of such estate with creditors, legatees or heirs, or their legal representatives; or if any executor or administrator shall become insane, or otherwise incapable of, or evidently unsuitable to discharge the trust reposed in him, the said orphans' court are authorised and empowered in each and every of the said cases mentioned in this section, to grant letters of administration, with the will annexed, or otherwise as the case may require, to such person or persons as may be entitled to the same, and as to the said court shall seem meet. And the letters, oath and bond, of the administrator thus appointed shall be the same as herein before directed, except that the words, "not already administered;" shall be added in the proper places, and he shall have the same power and authority to administer the estate of the deceased, not administered upon by such former executor or administrator, and be subject to the same duties, in as full and ample a manner as if the executor or administrator, so removed, or residing out of this state, insane or otherwise incapable to discharge the trust reposed in him, as aforesaid, were actually dead.

When administrator required to give further security.

SEC. 64. If any orphans' court shall grant letters testamentary, or of administration, of the estate of any person deceased, without taking good security for the same, as aforesaid, or if the security so taken shall afterwards become insufficient, it shall be lawful for the said court, on the application of any person interested in the distribution of said estate, to require such executor or administrator to give other good and sufficient security; and in default thereof, the letters testamentary, or of administration, shall be revoked, and administration granted to the person entitled to the same, according to the rules herein before prescribed in the case of an administrator *de bonis non;* and all acts done and performed, according to law, by the executor or administrator whose letters testamentary or of administration may be revoked as aforesaid, prior to such revocation, shall be valid and effectual; and all causes suits and controversies, depending in any court in this state, either for or against such executor or administrator, shall be prosecuted and defended, or discontinued, in the manner directed in the fifty-fifth section of this act.

Letters revoked on refusal.

Securities for administrator may petition for counter security.

SEC. 65. When securities for executors or administrators, or their representatives, conceive themselves in danger of suffering thereby, and petition the court for relief, the court shall summon the executor or administrator, and shall have full power to order, either that the said executor or administrator shall give good counter security, or that he shall execute a new bond, with good security, in a penalty not less than the penalty of the first bond executed by him, for the faithful discharge of his duties, and payable in like manner to the judge of probate of the proper county, and his successors in office. And such new bond shall have relation back to the time of granting the letters testamentary, or of administration, and shall be as effectual in every respect as if it had been executed before such letters had been granted. The condition thereof shall be as follows:

New bond may be taken.

Condition.

"The condition of the above obligation is, that whereas the above bond ——————, executor of the last will and testament of ——————, deceased, (or administrator of the goods, chattels and credits of ——————, deceased) hath heretofore executed a bond payable to ——————, and conditioned for the discharge of his duties as executor, (or administrator,) as aforesaid, which said bond bears date the ——— day of ————; and whereas by an order of court made on the ——— day of ————, other bond and security hath been required of the said executor (or administrator;) now therefore, if the said executor (or administrator) shall well and truly have kept and performed, and shall well and truly keep and perform the condition of the bond aforesaid, and shall in all respects have performed and shall continue to perform the duties of his office aforesaid, then this obligation to be void, otherwise it shall remain in full force and virtue."

When new bond given former security discharged.

SEC. 66. Upon the execution of such new bond with security, payable and conditioned as aforesaid, all the securities to the former bond, and their legal representatives shall be forthwith discharged from the obligation thereof, except only as to such matters for which an action on said bond may be then depending against such securities or their representatives or against any of them, and which may be prosecuted to a final judgment or decree.

Executors, etc. failing to comply, letters revoked.

Adm'r de bonis non appointed.

SEC. 67. If the executor or administrator shall fail to comply with such order for counter security or for the execution of a new bond with security as aforesaid, the court shall have full power to revoke and annul his power and authority as executor or administrator in part or in the whole, and to appoint an administrator *de bonis non*, in the same manner as if such executor or administrator were dead; or to take from the possession of the executor or administrator the estate of his testator or intestate, remaining unadministered, and place the same in the hands of his security or securities, or of some other person, or to make some other order or orders respecting said estate, as may be essential to the protection of the securities, having due regard always to the rights and interests of creditors, legatees or distributees.

Estate when committed to security of adm' etc. his power,

SEC. 68. When the estate of any testator or intestate shall have been committed to any security of the executor or administrator or any other person, in manner aforesaid, such security or other person during the continuance of his authority, shall have power to demand and receive the debts and other personal property due or belonging to the estate, to pay the debts due from it, and may sue and be sued, in the same manner as an executor or administrator.

Register to keep docket of applications for letters testamentary, etc.

SEC. 69. The judge of probate shall cause to be kept by the register of the orphans' court, a docket in which shall be entered all applications for the probate of wills, or for letters of administration or guardianship and the names of the persons making the same, and all applications for the settlement of the accounts of executors, andministrators, collectors, and guardians, in the order as to priority of time, such applications were made; to the end that the same may be heard and determined, or allowed at the next term of the said court; and shall moreover direct all necessary notices and citations to be issued to the persons principally interested, if within this state, to appear and shew cause, (if any they can,) why such application should not be granted or allowed; *Provided*, that wills may be proved, and letters testamentary, of administration and guardianship may be granted where no application has been made to the judge of probate in vacation.

Citations to be issued to those interested,

Proceedings of this court, how tested and signed,

Sec. 70. Letters testamentary of administration and of guardianship shall be tested in the name of the judge of probate, and signed by the register, with the seal of office thereto affiixed. And all process issuing from the said court, shall be tested and signed in like manner: and bonds given by executors, administrators, collectors and guardians, and all other bonds, taken in the said court, shall be made payable to the judge of probate and his successors in office.

Bonds, to whom payable,

Inventories, how taken and returned,

Sec. 71. In every case wherein letters testamentary, or of administration, or of collection, are granted, in order that all persons interested in the personal estate may have an opportunity of knowing, as nearly as may be, the amount of the same, an inventory in case the estate lies in one county, or can conveniently be collected together, or inventories in case the property lies in more than one county, or cannot conveniently be collected together, shall be returned to the office granting the administration.

Appraisers appointed.

Sec. 72. On granting any letters testamentary, or of administration, or of collection, a warrant or warrants shall issue under the seal of office, authorizing three or more persons of discretion, not related to the deceased, nor interestered in the administration, to appraise the goods, chattels, and personal estate of the deceased, known to them or to be shewn by the executor, administrator, or collector; which warrant shall be in form as follows:

Form of warrant.

"The state of Mississippi, to ————, ———— and ———— Greeting: This is to authorize you jointly to appraise the goods, chattels and personal estate of ———— ————, late of ————, deceased, so far as they shall come to your sight and knowledge, each of you having first taken the oath or affirmation, hereto annexed, a certificate whereof you are to return, annexed to an inventory of the said goods, chattels and personal estate, by you appraised in dollars and cents; and in the said inventory you are to set down in a column or columns opposite to each article the value thereof. Witness, ———— judge of probate, of the county of ————
————, register."

And on the death, refusal or neglect, to act of any appraiser, another warrant may forthwith issue in its stead.

Oath to be taken by appraisers

SEC. 73. The appraisers, before they proceed to act, shall take the following oath or affirmation, as the case may be, annexed to, or endorsed on the warrant, before any person authorised to administer an oath.

"I, A. B. do swear, (or affirm) that I will well and truly, without partiality or prejudice, value and appraise the goods, chattels and personal estate of —————, deceased, so far as the same shall come to my sight and knowledge, and will in all respects, perform my duty as appraiser to the best of my skill and judgment: so help me God."

Their duty.

SEC. 74. The appraisers shall proceed as conveniently as may be, to the discharge of their duty, and shall set down each article, with the value thereof in dollars and cents; all the valuations on one side of the paper shall be set down in one column distinctly, in figures, opposite to their respective article; the contents of each column shall be cast up and set down under the last column.

Inventory certified, with certificate of oath.

When to be returned.

Penalty for neglect.

SEC. 75. When the inventory shall be finished, the appraisers shall certify the same, under their hands and seals, and a certificate of their having taken the oath or affirmation as aforesaid, shall be thereto annexed; and every inventory shall be returned to the proper office, within six calendar months from the date of the letters testamentary, of administration, or collection, or within such time as the case may require, and the court shall appoint; and further time, on application of the party, may be granted by the court; and it shall be the duty of any executor, administrator or collector, to return the inventory or inventories which shall be delivered to him by the appraisers, and on failure by the executor, administrator or collector, an attachment may issue to enforce the return. On the return of such attachment executed, the court shall have power to fine the party, not exceeding fifty dollars.

To whom notice of appraisement given.

SEC. 76. If there be any of the persons interested in the administration within three miles of the place where the personal estate is to be appraised, it shall be the duty of the executor, administrator or collector; and of the appraisers to give notice to the said persons, or at least two of them, of the time and place appointed for making the appraisement.

Inventories, etc. given in evidence.

SEC. 77. Inventories and appraisements, or authenticated copies thereof, may be given in evidence in any suit by, or against the executor, administrator or collector, but shall not be conclusive for or against him if other testimony be given, that the estate was really worth or was *bona fide* sold for more or less than the appraisement. And each appraiser shall be entitled to two dollars per day for his attendance, to be paid by the executor, administrator or collector, and charged to the estate.

Inventory of money, when returned; Penalty for neglect.

Sec. 78. Every executor, administrator or collector, shall return, within the time, and under the pain aforesaid, with an affidavit of the truth, annexed an inventory of the money belonging to the deceased, which hath come to his hands, and of the debts due to the deceased, which have come to his knowledge, specifying the nature of each debt, and setting down such as he or she shall deem sperate, distinct and separate from those which he or she shall deem desperate and doubtful.

Inventory of further assets how to be returned.

Sec. 79. Whenever personal property of any kind or assets, not mentioned in an inventory already made out, shall come to the possession or knowledge of an executor, administrator or collector, an account or inventory of the same shall be returned, appraised by three respectable, disinterested, sworn appraisers, appointed as aforesaid within two calendar months from the time of the discovery.

Adm'r appointed after collector, his duty.

Sec. 80. In case an inventory be returned by a collector duly appointed, the executor or administrator, thereafter administering, shall within three calendar months after the date of his or her letters testamentary, or of administration, either return a new inventory in place of the collector's inventory, or an acknowledgment in writing that he or she hath received from the collector the articles contained in the first inventory, or consent to be answerable for the same in the same manner as if the said inventory had been made out after his or her administering upon the estate: *Provided*, That nothing herein contained shall be construed to render any executor or administrator answerable for not making a return of the inventory aforesaid, where it shall appear to the court that he or she hath been prevented from making such return by the improper detention of the goods of the deceased, by the collector aforesaid.

Proviso.

Widow's dower when estate insolvent.

Sec. 81. When the estate of any testator or intestate shall be represented insolvent, and shall not be sufficient, both real and personal, to pay the just debts, the widow of such testator or intestate, shall, though there be no children or descendants of them, of such testator or intestate, be endowed with one third only of the lands, tenements and hereditaments of her deceased husband, any thing in this act to the contrary notwithstanding.

Slaves to be sold when equal division cannot be made.

Sec. 82. Where one or more slaves shall descend from a person dying intestate, and an equal division thereof cannot be made in kind on account of the nature of the property, it shall be lawful for the court of chancery, or orphans' court of the proper county, by which the administration to the estate of the intestate was granted, to direct the sale of such slave or slaves, and the distribution of the money arising therefrom, according to the rights of each claimant: *Provided, always*, That each

Proviso.

claimant shall be first duly summoned to shew cause, if any he can, against such sale.

SEC. 83. In cases where any slave or slaves have been or shall be devised to any widow for life, in lieu of her dower, or have been or shall be held by any person, for his or her life only, or the life of any other person or persons, every such person entitled to such life estate, or his or her guardian, if he or she be an infant, shall within sixty days, after coming to the possession of such slave or slaves, cause to be lodged with the register of the orphans' court of the county wherein he or she resides a list containing the names of all such slaves, describing their ages and sexes under the penalty of fifty dollars for each slave. Such register shall record the said list in a well bound book, to be kept for that purpose, for which he shall receive from the person furnishing any such list a fee of one dollar. The increase of all such slaves, shall within the like time from their births, in like manner be registered with the said register, under the like penalty, and for a further fee in each case, of twenty-five cents. In case of the intermarriage of any such widow, her husband shall from that time, perform all the duties required by this section, under the like penalties. And all the penalties hereby incurred, shall go and accrue to any party aggrieved, to be recovered with costs by action of debt, in any court having competent jurisdiction.

A list of slaves devised for life to be lodged with register, &c.

Penalty for neglect.

Register's duty

Increase of such slaves.

Widow's intermarriage, husband's duty.

SEC. 84. If any executor, administrator or collector, shall be of opinion, that it would be of advantage to the estate of the testator or intestate, to dispose of the crop growing at the time of his or her decease, it shall be lawful for the orphans' court of the proper county, on the application of such executor, administrator or collector, to order the sale of said crop, either at public or private sale on a credit of six months, taking of the purchaser or purchasers, good and sufficient security for the payment of the purchase money; but if said court shall, on hearing, be of opinion that such sale would not be of advantage to the estate of the testator or intestate, then the executor, administrator or collector, shall proceed to finish the crop on hand, and in that case, no division of the slaves employed in such crop, shall take place until the first day of January, next, after the death of the testator or intestate; and the proceeds of the crop shall be assets, in the hands of the executor, administrator or collector, subject to debts, legacies, and distribution; the taxes, tools, the expenses of feeding the slaves to that time, and delivering them well clothed, being first deducted; and in either case the executor, administrator or collector, shall render an account to the orphans' court, of his proceedings in relation to said crop.

Crop growing, when it may be sold.

Proceedings thereon.

If crop to be finished, when slaves may be divided.

Proceeds of crop to be assets

Adm'r to account.

SEC. 85. If an executor, administrator or collector, shall not within six months after the date of his letters, exhibit to the orphans' court, an inventory of the estate of the testator or

When executor &c. refuses or neglects to exhibit inventory.

Summons to be issued.

intestate or at such other time as the court shall appoint, a summons, returnable within not less than eight, or more than thirty days, may *ex officio*, or on application of a person interested, be issued against such executor, administrator or collector, to shew cause wherefore such inventory hath not been exhibited, and if the summons be duly returned, "summoned," or upon two citations returned, "*non est*," by the sheriff of the county wherein the party resided at the time of obtaining his letters, and he do not appear at the return of such summons, or appearing shall not shew sufficient cause, the said court may immediately enter on its proceedings, and record, that the said letters be revoked, and may proceed to grant other letters, in the same manner as if such executor, had not been named in the will, or as if such administrator or collector, were not in existence; and the power of such executor, administrator, or collector shall thereupon cease, and he shall be bound to deliver up, on demand, to the person obtaining such letters all the property of the deceased, in his hands, or be liable to be sued by such person on his administration bond, or the court may make an order for the purpose.

Proceedings thereon.

If more than one adm'r etc. named, any one may return.

SEC. 86. If there be more than one executor, administrator or collector named in the letters, any one or more of them, on the neglect of the rest, may return an inventory, and the executor, administrator or collector, so neglecting shall not thereafter interfere with the administration or have any power over the personal estate of the deceased; but the executor, administrator or collector so returning shall thereafter have the whole administration, unless within two months after the return, the delinquent or delinquents shall assign to the court some reasonable excuse, which it shall deem satisfactory.

Duty of Judge in vacation.

SEC. 87. The judge of probate, besides the duties enjoined on him in term time, is hereby empowered and required to take, receive and audit, all accounts of executors, administrators, collectors and guardians; to receive wills exhibited for probate, applications for administration, inventories and appraisements, to order such inventories and appraisements duly made, to be recorded; to appoint guardians to minors, of their own election; and to cause to be issued all citations and other necessary process, returnable to the next term of said court. And the said judge of probate, after examining and auditing such accounts, and causing them to be properly stated, shall report the same for allowance to the next term of the said orphans' court, the executor, administrator, collector or guardian giving at least forty days notice of his intention of having such account presented to the said court for allowance at such term, by posting up notice thereof in three of the most public places in the county, or advertising the same for three weeks at least in some public newspaper in this state, as the said judge of probate shall have directed; and the court on due proof notice as aforesaid, and no exception being made to the account as stated, may decree

Proceedings on the accounts of execut'rs, etc an allowance thereof; but if any person or persons, interested in the settlement of the said account, shall by himself or attorney, appear and make exception to the same, the court shall either proceed to hear the proofs and allegations, and correct or amend the mistakes or errors in the account as reported, or refer the same to auditors who shall examine and re-state the account after hearing parties and witnesses, and make report to the next or some subsequent term of the court, as the said court shall direct, for confirmation and allowance as aforesaid.

Auditors may be appointed; their duty.

Sec. 88. The bare naming of an executor in a will, shall not operate to extinguish any just claim, which the deceased had against him, but it shall be the duty of every such executor, accepting the trust, to give in such claim in the list of debts, and on his failure to give in such claim, or any part thereof, any person interested in the administration may allege the same, by petition to the orphans' court granting the administration, and the said court with consent of the parties, may decide on the same, or it may be referred by the parties, with the approbation of the court, or, at the instance of either party, the court may direct an issue or issues to be tried, and the same shall be tried in the circuit or superior court of the same county, and such court shall have power to direct the jury, and grant a new trial, as if the issue or issues were in a suit therein instituted, and a certificate from such court or any judge thereof, of the verdict or finding of the jury, under the seal thereof, shall be admitted by the orphans' court, to establish or destroy the claim, or any part thereof; and if the executor shall give in such claim, or the same or any part be established as aforesaid, he shall account for the sum due in the same manner as if it were so much money in his hands, and on failure his bond may be put in suit.

Executor to give in claim against himself.

Proceedings for neglect.

Sec. 89. In like manner it shall be the duty of every administrator or collector, to give in a claim against himself, and on giving it, or failure to give it, there shall be the same proceedings in every respect as are herein prescribed, with regard to an executor.

Administrator etc. to give in claim against himself.

Sec. 90. No executor, administrator or collector shall discharge any claim, against the deceased (otherwise than at his own risk) unless the same be first passed by the orphans' court, granting the administration, or unless the said claim be proved according to the following rules, (to wit:) the voucher or proof of a judgment or decree, shall be a short copy thereof under seal, attested by the clerk or register of the court where it was obtained, who shall certify that there is no entry or proceeding in the court, to shew that the said judgment (or decree) hath been satisfied; there shall likewise be a certificate of some person authorised to administer an oath, endorsed on, or annexed to, a statement of the debt due on such judgment, or decree, that the creditor, since the death of the deceased, hath taken before him the following oath, or affirmation, viz: "That he (or she) hath not

Rules for the proof of claims against an estate received any part of the sum for which the judgment or decree was passed, except such part (if any) as is credited;" and if the creditor on the judgment or decree be an assignee of the person who obtained it, the oath or affirmation, shall go on, and say further, "and that to the best of his (or her) knowledge or belief, no other person hath received any parcel of the said sum, except such part (if any) as is credited," and an assignee shall also produce the assignment, under the hand of the assignor; and if there has been more than one assignment, each assignment shall be produced under the hand of the party. If a special bail shall have discharged a judgment against the deceased, he shall be considered as the judgment creditor, and in case the plaintiff who obtained the judgment shall not have assigned the same (as he ought to do) to the bail, a receipt from him given to the bail, shall be considered as equivalent to an assignment. If there be more than one creditor, the whole oath or affirmation aforesaid, with the other vouchers, shall be sufficient. In case of a specialty, bond, note or bill of exchange protested, the vouchers shall be the instrument of writing itself, or a proved copy, in case it be lost, with a certificate of the oath or affirmation, made as aforesaid since the death and endorsed on or annexed to, the instrument, or a statement of the claim, "that no part of the money intended to be secured by such instrument hath been received, or any security or satisfaction given for the same, except what (if any) is credited," and if the creditor on such instrument be an assignee, there shall be the same oath (or affirmation) of the original creditor, with respect to the time of the assignment; and in case of successive assignees, there shall be the same oath (or affirmation) taken by each, with respect to the time of each respective assignment. In case of a bill of exchange, the protest, and other things, which would be required, (if the deceased were alive,) shall be necessary to justify an executor or administrator in making payment or distribution. If the claim be for rent, there shall be produced the lease itself, or the deposition of credible witness or witnesses, or an acknowledgement in writing of the deceased, establishing the contract, and the time which hath elapsed during which rent was chargeable, and a statement of the sum due for such rent, with an oath or affirmation, of the creditor thereon endorsed, "that no part of the sum due for the said rent, or any security or satisfaction for the same, hath been received, except what (if any) is credited;" and if the creditor be an assignee, there shall be such oath or affirmation of the original creditor, with respect to the time of assignment. And the vouchers or proofs of any claim on open account shall be a certificate of an oath or affirmation taken by the creditor as aforesaid, since the death, endorsed on, or annexed to the account, "that the account as stated is just and true, and that he or she hath not received any part of the money stated to be due, or any security or satisfaction for the same, except what (if any) is credited," and moreover such account shall not be paid until the same be examined and allowed by the orphans' court.

Open accounts not to be paid until allowed by the court.

Distribution of intestat's estate

SEC. 91. Any person entitled to the distribution of an intestate's estate, may at any time after the expiration of twelve months from granting the letters of administration, petition the orphans' court of the proper county, setting forth his claim, whereupon it shall be the duty of the said court to grant a rule on the administrator or administrators, to make the distribution agreeably to law; but no administrator or administrators shall be compelled to make distribution at any time, until bond and security be given by the person entitled to distribution, to refund a due proportion of any debts or demands which may afterwards appear against the intestate, and the costs attendant on the recovery of such debts.

Legacy or estate by will.

SEC. 92. Any person entitled to a legacy, or any estate by will, shall be entitled to the provisions of the foregoing section as in case of administrators: *Provided*, That nothing herein contained shall be so construed, as to compel any distributee to give bond and security as aforesaid, for his or her distribution of the estate of any intestate, after a final settlement shall have been made by the administrator or administrators.

Proviso.

Executors, etc. not to remove property out of the state.

SEC. 93. No executor, administrator, collector or guardian, shall under any pretence whatsoever, remove any property whatsoever, wherewith such executor, administrator, collector or guardian may be charged by virtue of his letters, out of the limits of this state. And in case any executor, administrator, collector or guardian shall remove such property, it shall be the duty of the judge of probate of the county wherein the administration or guardianship may have been granted, to institute suit forthwith, in his name, for the use of the heirs of the testator or intestate, or ward of such guardian, as the case may be, in any court having jurisdiction of the case, against such executor, administrator collector or guardian, and his, her or their securities, on the bond of such executor, administrator, collector or guardian; and the jury trying such cause, shall on satisfactory evidence of the removal of the property, as aforesaid, render a verdict against the defendant or defendants for the full value thereof, and such other damages as the parties interested may have sustained.

Register to furnish list of exrs, etc. failing to account.

SEC. 94. It shall be the duty of the register of the orphans' court of each county in this state, on the first day of the term of the respective courts, to furnish the court with a list of all executors, administrators, collectors and guardians, who have failed to settle their accounts within twelve months next preceding: and it shall be the duty of the court to proceed forthwith to cite all such defaulting executors, administrators, collectors and guardians, in the manner provided by law: *Provided, nevertheless*, If the said executor, administrator, collector or guardian shall prove to the satisfaction of the court, that the failure was not produced by unnecessary delay or negligence, that then

Proceedings thereon.

and in that case, the court may grant such further time as it may think proper.

Proceedings when executor, etc. shall be cited and fails to account:

SEC. 95. Whenever any executor, administrator, collector or guardian, shall be cited by the orphans' court of any county to appear and settle his accounts as executor, administrator, collector or guardian, and shall fail to appear in obedience to the citation, the said orphans' court shall have power to issue an attachment against the person or persons so failing in the same manner as the circuit or superior courts of this state might or could do for disobedience to any order, judgment or decree of said courts: and the said orphans' court shall have power on failure of such executor, administrator, collector or guardian to settle his accounts aforesaid, to revoke his or her letters, and grant administration or guardianship to the person or persons, lawfully entitled to the same, or make such other order as the nature of the case may require, having regard to the preservation of the estate of the testator, intestate or minor, as the case may be.

Lands purchased from U. S. and not paid for

SEC. 96. Whenever any person shall have purchased land of the United States, and shall die before the payment therefor shall have been completed, his or her executor or administrator, shall be, and he is hereby authorised and empowered to sell by order of the orphans' court of the proper county, any property belonging to the estate of the deceased, giving public notice of the time and place of such sale, and upon such terms as shall be prescribed by the said orphans' court, and to apply the proceeds of such sale to the payment of said land: *Provided, nevertheless*, That this shall not extend to cases, where the testator or testatrix shall have made provision for the payment of such land, by his or her last will and testament.

Further provisions.

SEC. 97. Whenever any person shall have purchased land of the United States, and shall die before the payment therefor is completed, and the personal property of said deceased, in the opinion of the orphans' court of the proper county, shall be insufficient to pay the balance due for said land, the said orphans' court are hereby vested with power and authority to grant to the executor or administrator of said deceased, an order to sell said land so purchased of the United States and unpaid for, upon such terms as in the opinion of the said orphans' court will be most advantageous for said estate, and to transfer to the purchaser or purchasers the certificate for the same.

Duty of executor, &c. when personal estate is insufficient.

SEC. 98. When any executor or administrator shall discover or believe, that the personal estate of his testator or intestate, is insufficient to pay the debts of the deceased, then it shall be the duty of such executor or administrator, as soon as may be, to make and exhibit on oath, a just and true account of the said personal estate and debts as far as he can discover the same, to the orphans' court of the proper county; and the said court shall thereupon cause a citation to issue, directing all persons interested in the lands, tenements and hereditaments of the deceased, to appear before the orphans' court, at a certain day therein to be named, not less than forty days after the time of issuing such citation, to shew cause why so much of the said lands, tenements and hereditaments of the said testator or intestate, should not be sold, as will be sufficient to pay his or her debts, or the residue thereof as the case may require: which said citation shall immediately thereafter be set up in three of the most public places in the county in which such lands, tenements and hereditaments are situated, for the space of thirty days, and be published for the same length of time in one of the public newspapers in this state.

Court to cause citation to issue

SEC. 99. The orphans' court shall at the time specified in the said citation, or at such other time as it may then appoint, hear and examine the allegations and proofs of the said executor or administrator, and of other persons interested. And if the said court, on such examination, shall find that the personal estate of such testator or intestate, is not sufficient to pay his or her debts, the said court shall order and direct the executor or administrator to sell the whole, if necessary, of the lands, tenements and hereditaments of the said testator or intestate for the payment of his or her debts, or so much thereof as will be sufficient for that purpose; and when a part only, the said order shall specify what part: *Provided*, That when any houses, lots or lands, are so situated or circumstanced, that a part thereof cannot be sold without manifest prejudice to the heirs or devisees, the said court may, at its discretion, order the whole to be sold; and the overplus arising from such sale shall be distributed among the heirs or devisees, according to the law of descents in the former, and the will in the latter case. And the heir or devisee, whose lands, tenements or hereditaments, so descending or devised, shall be sold as aforesaid, for the payment of the debts of the intestate or testator may, compel all others claiming or holding under such intestate or testator, to contribute in proportion to their respective interests, so as to equalize the burden or loss.

When personal estate insufficient, land to be sold.

Proviso.

SEC. 100. Any executor or administrator who may be ordered to sell the lands, tenements or hereditaments, of any testator or intestate, shall give notice by advertisements put up at three or more public places in the county where such lands, tenements or hereditaments are situate, of the time and place of selling the same, at least forty days before the time of sale, and by publishing such advertisements in one of the public newspapers in this state, for three weeks successively before such days of sale, and shall at the time and place appointed, set up the said lands, tenements and hereditaments for sale at public vendue, upon a credit of twelve months from the day of sale, and strike off the same to the highest bidder, who shall give bond with satisfactory security, for the amount thereof; and the ex-

Administrator to give notice of sale.

Take bond of purchaser.

To make report on proceedings of sale.

ecutor or administrator making such sale, shall make report in writing, of all the proceedings thereon, to the next orphans' court after such sale: *Provided*, That such executor or administrator may adjourn the said sale from time to time, not exceeding forty days in the whole.

To make deed.

SEC. 101. The said executor or administrator shall, and is hereby authorised to make a deed or deeds to the purchaser or purchasers, to the lands, tenements and hereditaments so sold; which deed or deeds shall vest in such purchaser or purchasers, as good and perfect an estate in the premises therein mentioned, as the heirs or devisees of such testator or intestate were seized of, or entitled to at the time of making the said order of sale by the said orphans' court.

Lands of intestate sold when they cannot be equally divided among the heirs

SEC. 102. Where lands, tenements or hereditaments shall descend from a person dying intestate, and an equal division thereof cannot conveniently be made, it shall be lawful for the court of chancery or the orphans' court of the county, by which the administration to the estate of the intestate was granted, to direct the sale of such lands tenements or hereditaments, and the distribution of the money arising therefrom according to the rights of each claimant: *Provided, always*, That each claimant shall be first duly summoned to shew cause (if any he can,) against such sale.

Proviso.

Proceedings when estate shall be insolvent.

SEC. 103. When the estate both real and personal of any person deceased, shall be insolvent, or insufficient to pay all just debts which the deceased owed, the said estate both real and personal shall be distributed to and among all the creditors, in proportion to the sums to them respectively due and owing; saving that debts due for the last sickness and necessary funeral expenses of the deceased shall be first paid; and the executor or administrator shall exhibit to the orphans' court (before any debts paid to any creditor, except as aforesaid) an account and statement, as is directed in the ninety-eighth section of this act, including also the lands, tenements and hereditaments of the testator or intestate. And if it appear to the said orphans' court that such estate is insolvent, then after ordering the lands, tenements and hereditaments of the testator or intestate, to be sold as aforesaid, they shall appoint two or more fit persons to be commissioners, with full power to receive and examine all claims of the several creditors of such estate; and the said commissioners shall cause the times and places of their meeting, to attend the creditors, for receiving and examining their claims, to be made known by causing notices to be posted up in such public places, and published in such newspaper or newspapers as the said orphans' court shall direct; and six moths, and such further time (as the circumstances of the case may requir[illegible] not exceeding eighteen months, shall be allowed by the said court to the creditors for bringing in and proving their claims before the said commissioners; at the end of which limited time the said commissioners shall make their report, and present on oath, a list of all the claims that shall have been laid before them with the sums they shall allow on each respective claim to the said orphans' court: and the said court shall order just recompense to the said commissioners out of the estate of the deceased. And the debts due for the last sickness and necessary funeral expenses being first deducted, the said court shall order the residue and remainder of the estate both real and personal, (the real estate being sold according to law,) to be paid and distributed by the executor or administrator, to and among the creditors, who shall have made out their claims with the commissioners as aforesaid, in proportion to the sums unto them, respectively due and owing: *Provided*, That notwithstanding the report of any commissioner, the creditor, whose claim is wholly, or in part rejected, or any executor or administrator who may be dissatisfied with such report, on a particular claim, may for good and sufficient cause shewn by the said creditor, executor or administrator, to the said orphans' court, have the said claims, referred by the said court to referees, whose report and award thereon, returned to the next term of the said court, and approved of, shall be final and conclusive. And to the end that the executor or administrator may have an opportunity to ascertain the situation of the estate of the testator or intestate, no suit or action shall be commenced or sustained against such executor or administrator, in such capacity, till after the expiration of six months from the time of proving the will of the testator, or of granting letters of administration on the estate of the deceased: Nor shall any action or suit be commenced or sustained against him, after the estate of the testator or intestate be represented insolvent;* excepting, however, in all cases, actions for debts due for the last sickness and funeral expenses of the deceased; excepting also, that if the executor or administrator, having objections to the claim, on which any action (other than those last mentioned) may be brought, shall consent to have such claim settled by action at law; in such case the judgment of the court shall determine the claim, and be reported by the commissioners as such. Every executor or administrator after final apportionment of such distribution among the creditors of the testator or intestate as aforesaid, shall be liable to the creditors for their respective shares in such distribution. And if any creditor shall not make out his claim with the commissioners within the time of their commission, or before referees, or at common law in the manner this act provides, he shall be forever barred of his debt or demand; unless such creditor shall find other estate of the deceased, not inventoried or accounted for by the executor or administrator before distribution.

Proviso.

No action to be brought against executor. when estate insolvent

(*See Chap 10, sec 1.)

Every executor after apportionment liable to creditors for their shares.

Debt not due to be exhibited.

SEC. 104. Any creditor whose debt is not due, may exhibit it to the executor, administrator or collector, as if it were due; and thereupon shall be considered as a creditor under this act, and shall receive a dividend of the estate of the said testator or intestate, deducting a rebate of legal interest, for what he shall

Rebate of legal interest to be deducted.

receive on such debt to be computed from the actual payment thereof, to the time such debt would have become due.

Executor not compelled to plead specially.

SEC. 105. Executors, administrators, collectors and guardians, shall not be compelled to plead specially, to any action or suit at law, brought against them in their said capacity; but may under the general issue give any special matter in evidence.

Commissioners on an insolvent estate may examine creditors on oath.

SEC. 106. The commissioners appointed to receive and examine the claims of the creditors to the estate of any person deceased, when reported insolvent, are hereby authorised and empowered, when judged expedient by a majority of them to examine on oath, or affirmation, any creditor touching the truth of his or her claim; and may thereupon enquire of such creditor, the truth of any writing, demand, or the charges in any account exhibited as a claim against such insolvent estate, and whether the same and every part thereof remains actually due and unpaid, and may make such other questions relative thereto as shall be material, and tending to discover the truth of such claim; and the said commissioners or either of them, are hereby authorised and empowered, to administer such oath or affirmation. And if any person who shall have taken such oath or affirmation, (the same having been duly administered as aforesaid,) shall thereupon wilfully and corruptly make any false answer or answers, to any question or questions, material to the determination of the truth of the claim, in proof of which such oath or affirmation shall have been taken, and shall be thereof duly convicted, he or she so offending, shall be adjudged guilty of wilful and corrupt perjury, and liable to the pains and penalties thereof.

Penalty for false swearing.

Proceedings when commissioners fail to report in time.

SEC. 107. If the commissioners appointed by the orphans' court of any county, to receive and examine claims against the estate of any deceased person which has been by the orphans' court declared insolvent, shall fail to make their final report within the time limited by law, it shall be the duty of such orphans' court, to make new appointments, or extend the time for the said commissioners to receive claims against such estate, and report thereon, to such time as shall to said court seem reasonable and just, any thing in this act to the contrary notwithstanding.

Claim of executor.

SEC. 108. In no case shall an executor or administrator be allowed to retain for his own claim against the deceased, unless the same be passed by the orphans' court; and every such claim shall stand on equal footing with other claims of the same nature.

Sale of property by executors and administrators.

SEC. 109. It shall not be lawful for any executor or administrator, to take the estate or any part thereof, of any testator or intestate, at the appraised value, or to dispose of the same, at private sale, except where the same is directed by the will of the testator, or provided for by this act. But in all cases where it may be necessary to sell the whole or any part of the personal estate of any testator or intestate, it shall be the duty of the executor or administrator to apply to the orphans' court of the proper county, for an order of sale, and upon obtaining the same to advertise the time and place of such sale, in three or more public places in the county, at least thirty days previous to the day of sale, and then and there proceed to sell the same at public sale to the highest bidder, giving at least six months credit, the purchaser or purchasers giving bond with approved security.

Action by one administrator or executor against another.

SEC. 110. When two or more have letters of administration granted to them of any intestate's estate, and one or more of them take all, or the greatest part of such estate, and refuse to pay the debts or funeral expenses of such intestate, or refuse to account with the other administrator, in such case the administrator so aggrieved, may have his action of account, against the other administrator, and recover such proportionable share of such estate as shall belong to him; and any executor being a residuary legatee, may have an action of account against his co-executor or executors, and recover his part of the estate in the hands of such co-executor or executors; and any other residuary legatee may have the like remedy against the executors; any person having a legacy bequeathed in any last will and testament, may sue for and recover the same at common law.

Executor and administrator may sue and be sued.

SEC. 111. Executors, administrators and collectors shall have full power and authority to commence and prosecute any personal action whatever, at law or in equity, (as the case may require) which the testator or intestate might have commenced, and prosecuted, except actions of slander, and for injuries or torts done to the person; and they shall also be liable to be sued in any court of law or equity (as the case may require,) in any action (except as aforesaid) which might have been maintained against the deceased, and they shall be entitled to, or be answerable for costs, in the same manner as the deceased would have been; and they shall be allowed for the same in their accounts; provided the court awarding costs against them, shall certify, that there were probable grounds for instituting, prosecuting or defending, the action on which a judgment or decree shall have been against him. And in no action against an executor, administrator or collector, shall he be compelled to put in special bail.

Not compelled to put in special bail.

Lands devised jointly, how divided.

SEC. 112. When any person by last will and testament shall devise his or her real estate, or any part thereof, to two or more devisees, not ascertaining the metes and boundaries of each devisee's share, any of whom being under age, such devisees may apply to the orphans' court of the county, in which the said last will and testament was proved and recorded; and the said court on application of any one of the said devisees, may order a division thereof, to be made agreeably to the true intent and meaning of the said last will and testament; and each devisee's share shall be ascertained by three or five disinterested freeholders, to be appointed by the court, and the report made thereon by them or a majority of them, under their hands and seals to the next orphans court, after such division shall be made and approved by the said court, and entered on the records thereof, shall be conclusive on all the parties concerned. And when the real estate of any person dying intestate, shall descend to two or more children or other heirs of such intestate, one or more of whom being under age, the said court on application may order and direct a division of such real estate, agreeably to the law of descents, the metes and bounds of each heir's share to be ascertained by three or five disinterested freeholders, to be appointed as aforesaid, whose report or that of a majority of them, returned, approved and recorded as aforesaid, as in the case of devisees, shall be conclusive on all parties concerned; and in either case, the report of the said freeholders, shall be returned under oath: *Provided*, That the devisees or heirs, or the guardian of such as are under age, within this state, and not applying for such division, shall have such notice of the time and place of the meeting of the said freeholders for the purpose of making the said division as the court shall direct.

Intestate's estate descending to two or more heirs, how divided.

Sale and conveyance of lands devised to be sold.

SEC. 113. The sale and conveyance of lands, devised to be sold, shall be made by the executors, or such of them as shall undertake the execution of the will, if no other person be thereby appointed for that purpose, or if the person so appointed, shall refuse to perform the trust, or die before he shall have completed it: but, if none of the executors named in such will, shall qualify, or, after they have qualified, shall die before the sale and conveyance of such lands, then in those cases, the sale and conveyance thereof shall be made by such person or persons to whom administration of the testator's estate, with the will annexed, shall be granted.

Any person holding bond of deceased for titles may petition court.

SEC. 114. Any person who shall sell lands, tenements or hereditaments, and enter into bond, or other written agreement to make titles thereto, and shall depart this life without having made such titles, then, and in that case, the person to whom such bond or other written agreement was given, his executor or administrator, may petition the orphans' court of the county where letters testamentary, or of administration of such deceased person, was granted, to order the executor or administrator to make titles, agreeably to the bond, or other written agreement given by the testator or intestate; and it shall be the duty of such court to cause notice of such petition to be published in some newspaper in this state, for at least two months, if the party reside without the limits of the county, or to cause a citation to issue, returnable to some regular term of said court if the party reside in the county, and the court shall in either case, if they find that such sale was fairly made, order the executor or administrator to make titles according to the tenor of the bond or other written agreement, to the lands, tenements or hereditaments so sold by his testator or intestate; and any ex-

Notice of petition to be published.

Executor to make titles.

Penalty for refusal.

ecutor or administrator, refusing to comply with such order may be imprisoned by the court, for contempt, until he or she comply with the order made as aforesaid; provided, that either party dissatisfied with the sentence, order or decree of the orphans' court on any petition as aforesaid, may take an appeal as in other cases.

In what time claims to be presented.

SEC. 115. All claims against the estates of deceased persons, shall be presented to the executor, administrator or collector, within eighteen months after the publication of notice for that purpose by such executor, administrator or collector, and not after; and all claims not presented within the time aforesaid, shall be for ever barred, and the estate of the testator or intestate, shall be thereafter discharged from the payment of such claim, or claims, and the executor, administrator or collector, may give this act in evidence, without pleading the same specially, in bar of any suit or action, either in law or equity, brought to recover the amount of any claim or claims, of which notice had not been given by the creditor or creditors, according to the foregoing provisions: *Provided*, That the above limitation shall not be construed to extend to legatees or distributees, claiming as such; and in case the creditor or creditors shall reside without the limits of this state, and have no agent or attorney resident within the same, a further term of eighteen months shall be allowed such creditor or creditors, to present his, her or their claim or claims, to the executor, administrator or collector of the testator or intestate.

Executor to give notice requiring claims to be presented within the time limited.

SEC. 116. It shall be the duty of executors, administrators and collectors, within two months after the granting of letters testamentary or of administration, to publish in some newspaper printed in this state, a notice requiring all persons having claims against the estate of their testator or intestate, to exhibit the same within the time limited by law, or the same will be barred: which notice shall state the time of granting such letters testamentary or of administration, and shall continue to be published once a week for six weeks, or for a longer time as the court shall direct.

Sale by executor or adm'r, when to commence and how long to continue.

SEC. 117. No sale by an executor or administrator, shall commence before the hour of twelve o'clock, on the day appointed for the same, nor continue longer than the hour of five o'clock of the same day; but in case that time shall be insufficient to complete the sale of such estate, the executor or administrator may continue the sale from day to day until the whole of such estate ordered to be sold, is disposed of, by giving public notice thereof to the attending company, at the conclusion of the sale on each day; and such sale shall commence and end on each day within the hours aforesaid; and any such sale which may be conducted in any other manner than herein directed, is hereby declared to be null and void.

Ex'r not to require note payable or negotiable in bank.

SEC. 118. No executor or administrator shall require any bond, or note payable and negotiable at the Bank of the State of Mississippi, or any other bank in said state, for property belonging to the estate of any testator or intestate, which such executor or administrator may sell at public sale by order of the orphans' court.

Actions that survive.

SEC. 119. All actions which have been commenced and prosecuted for or against any testator or intestate, (except actions of slander, and for injuries or torts done to the person) shall and are hereby declared to survive for and against executors and administrators, with the same effect that they might or could have been had or maintained for, or against the testator or intestate; any law, usage or custom, to the contrary in anywise notwithstanding.

Executor not accountable for property that hath perished.

To account for the increase of property.

Compensation to executor or Adm'r.

SEC. 120. The orphans' court granting the letters, shall have power to make allowance to any executor, administrator or collector, for property, of the deceased which hath perished or been lost, without the fault of the party; and no profit shall be made, and no loss shall be sustained by an executor, administrator or collector, in the increase or decrease of the estate under his management; but the executor, administrator or collector, shall return an inventory and account for such increase, and may be allowed for such decrease, on the settlement of the final or other account. And in all cases the court shall allow to an executor, administrator or collector, on the final settlement of his or her account, such compensation as shall appear to said court reasonable and just, for his or her trouble in administering the estate of the testator or intestate, not less than five nor exceeding ten per cent. on the amount of the appraised value of such estate.

Liability for embezzling property of deceased persons.

SEC. 121. If any person shall alienate or embezzle any of the goods or chattels of any deceased person, before he or she have taken out letters testamentary or of administration, and exhibited a true inventory of all the known estate of the person deceased, every such person shall stand chargeable, and be liable to the actions of the creditors and other persons aggrieved, as being executors in their own wrong.

Father may appoint guardian for his child by deed or will.

Power and duties of such guardian.

SEC. 122. Any father even if he be not of twenty-one years of age, may by deed in his life time, or by his last will and testament, either of them being executed and recorded, according to law, grant or devise the custody and tuition of his child (which had never been married,) although it be not born, during any part of the infancy of such child, to whomsoever he will; and such grant or devise, heretofore or hereafter to be made, shall give the grantee or devisee, the same power over the person of the child, as a guardian in common soccage hath, and authorise him by actions of ravishment of ward, or trespass, to recover the child with damages for the wrongful taking or detaining of him or her, for his or her use, and for the same use to undertake the care and management, and receive the profits of the ward's estate, real and personal, and prosecute and maintain any such actions and suits, concerning the same as a guardian in common soccage may do.

To declare his acceptance in the Orphan's court.

SEC. 123. Every guardian so appointed, shall, before he exercises any authority over the minor, or his estate, appear before the orphans' court of the proper county, and declare his acceptance of the guardianship, which shall be recorded, and shall give bond and security as herein after directed, for the faithful execution of his office, unless it is otherwise directed by such deed, or last will and testament.

To give bond.

If such guardian fail to appear on being summoned, court may appoint another.

SEC. 124. If any such guardian shall fail or neglect to appear in the orphans' court of the proper county, and give security as aforesaid, within three months, after his right to the guardianship shall have accrued, he may be summoned and compelled to declare his acceptance or renunciation of such trust; and if any guardian appointed as aforesaid, being summoned, shall fail to appear, or shall appear and renounce the same which renunciation shall be recorded, the said court may and shall proceed to appoint and qualify some other person or persons to the guardianship.

Appointm'nt of guardians.

SEC. 125. The orphans' court in any county of this state, shall have power to appoint guardians to orphans, under the age of fourteen years: *Provided*, none shall have been appointed by deed, or last will and testament of the father of such orphan, according to the provisions of this act. And where no guardian shall have been appointed, by deed or last will and testament as aforesaid, or in case the person so appointed shall renounce the trust, or fail to give security, the said court shall have power to allow orphans of the age of fourteen years or upwards, to choose guardians of their own election, which shall be done by petition to said court, signed and acknowledged by the orphan, in presence of the judge of probate, or some justice of the peace of the proper county, and recorded by the register of the orphans' court; but if such orphan shall elect a person, other than the natural guardian, the court shall have power at discretion, to appoint such natural guardian, in lieu of the person so chosen by such orphan. And if any orphan of the age of fourteen or upwards, shall fail to appear and choose a guardian as aforesaid, the said court shall cause a citation to issue to such orphan, to appear at the next term, and elect a person for his or her guardian; and in default thereof, or if the guardian so chosen, shall refuse the trust, or fail to give good and sufficient security, the said orphans' court shall have the same power to appoint a guardian to such orphan, as if he or she were under the age of fourteen years, giving the preference in all cases to the natural guardian, or next of kin, if any such apply for the guardianship, and tender the proper security, unless such applicant be mani-

Natural guardian preferred.

festly unsuitable to take the management of the person and estate of such orphan.

Guardian to give bond.

SEC. 126. Every guardian appointed by the court, or otherwise, (except where no security is required by deed or last will and testament, before he shall have authority to act as such,) shall enter into bond to the judge of probate, and his successors in office, in such penalty, and with such securities, as the court shall approve; and such bond shall be recorded, and be subject to be put in suit, and be in all respects, on a footing with the bond given by an executor or administrator; and the form of the condition of it shall be as follows:

Condition.

"The condition of the above obligation is such, that if the above bounden ————————, as guardian to ————————, of ———— county, shall faithfully account with the orphans' court of ———— county, as directed by law for the management of the property and estate of the orphan under his care, and shall also deliver up the said property, agreeably to the order of the said court, or the directions of law, and shall in all respects perform the duty of guardian to the said ————————, according to law, then the above obligation shall cease; it shall otherwise remain in full force and virtue in law."

Court to order property of orphan to be delivered to guardian.

SEC. 127. On a guardian's executing such bond, the court shall have power to order the land, distributive share, or other property belonging to such orphan, to be delivered to such guardian immediately, or at such time, as shall appear reasonable; in case of a legacy or bequest, the court shall direct the delivery as soon as it shall appear that the same may be delivered without prejudice to the person administering; and in case of a distributive share, the court shall direct the delivery as soon as the same shall be ascertained; and on failure of any former guardian appointed by the court, or of an executor or administrator, to comply with such order, his bond may be put in suit, and he may also be attached, fined and imprisoned for contempt of court.

Bond may be put in suit.

His inventory and account of the estate.

SEC. 128. Every testamentary or other guardian, shall within three months after his appointment and acceptance of such office, deliver into the office of the register of the orphans' court, an inventory, on oath, of all the estate, real and personal, which he shall have received, or taken possession of, to be entered of record; and shall exhibit once in every year and oftener if thereunto lawfully required, an account of the product of the said estate, and of the sale and disposition of such product, and disbursements; which accounts being examined and audited by the judge of probate, in the same manner as executors or administrators' accounts; and reported fairly stated, and supported by vouchers, and approved by the court, shall be recorded in the register's office.

Account to be recorded.

Sec. 129. Any guardian, who shall not deliver in such inventory, or render such account, shall, by order of the orphans' court, to which he is answerable, be summoned, and if he remain in default, his bond may be put in suit, and a new guardian appointed. And the said court may for any good and sufficient cause, displace a guardian: giving such guardian fourteen days previous notice, by citation, to appear and shew cause why he should not be displaced.

Proceedings of court on failure of guardian to deliver inventory, &c.

Sec. 130. No guardian shall commit waste on the lands, tenements, or hereditaments of his ward, but the court may on his application, allow him to cut down and sell wood, and account for the same in case it shall deem the same advantageous or necessary for the ward's education and maintenance. And any guardian having real estate under his care, shall either cultivate the same, with the slaves, stock and utensils, belonging to the ward or to be purchased with his or her money, with the approbation of the court, or he shall lease the same from year to year, or for any term not exceeding three years, and within the non age of the ward: or he may with the approbation of the court, undertake the estate on his own account, and be answerable for the annual value, which annual value shall be ascertained under the direction of the court. And every guardian shall account for all profit and increase of the estate, or annual value as aforesaid, and shall not be answerable for any loss or decrease sustained without his fault, to be allowed by the orphans' court.

No guardian to commit waste.

Guardian not answerable for unavoidable loss.

Sec. 131. The orphans' court shall ascertain at discretion, and settle the sum to be expended annually in the maintenance and education of orphans, having regard to the future situation, prospects and destination of the ward; and the said court, if it shall deem it advantageous to the ward, may allow the guardian to exceed the income of the estate, and may order the sale of such part of the personal estate, as may be necessary for the purpose aforesaid, and if the personal estate and the rents and profits of the real estate, be not sufficient for the maintenance and education of the ward, the orphans' court, on full investigation thereof, may, from time to time, order the guardian to sell such part of the ward's lands, tenements and hereditaments as it shall direct and judge adequate to his or her maintenance, and education.

Sum necessary for education to be settled by the court.

Court may order sale of lands

Sec. 132. The lands, tenements and hereditaments so ordered to be sold, shall be advertised by the guardian in three of the most public places in the county, and in some public newspaper in this state, for the space of forty days previous to the time appointed for the sale thereof; and the guardian, at the time and place so advertised, shall sell the same at public vendue upon a credit of twelve months, after the day of sale, to the highest bidder, who shall give bond with satisfactory security for the amount thereof; and such guardian shall make report in writing of his proceedings thereon, to the next orphans' court

Guardian to advertise lands.

To sell the same at vendue.

To take bond of purchaser.

after such sale: *Provided*, That the said guardian may adjourn the said sales from time to time, at his discretion. And said guardian shall make a deed to the purchaser or purchasers for the lands, tenements and hereditaments so sold; which deed shall vest in the purchaser or purchasers, as good and perfect an estate, in the premises therein mentioned, as the ward was seized of, or entitled to at the time of making the said order.

To make deed.

Account of guardian, what to state.

SEC. 133. Every account of a guardian shall state his expenditures in maintaining and educating the ward, not exceeding the income of the estate, unless allowed by the court; and for no balance of money in his hand shall he be charged interest, unless he shall consent to take the same on interest, but the court may direct him to place the same at interest, taking bond to the orphan, with security approved by the court; and for the trouble and care of such guardian, the court may allow any commission not exceeding ten per cent.

Court may require additional security.

SEC. 134. The orphans' court, if it be informed, or have cause to suspect, that the securities of a guardian, or any of them, are in failing or dubious circumstances, may require and compel such guardian to give additional security or securities; and if he refuse or neglect so to do, may displace him, and appoint a new guardian.

Powers of guardian when to cease.

SEC. 135. The powers and duties of every testamentary or other guardian, over the person and estate of the ward, shall cease and determine, when such ward shall either arrive at the age of twenty-one years, or be lawfully married, and in either event, the guardian shall forthwith render a final account of his guardianship, to the orphans' court, and shall deliver up agreeably to the order of said court, to the said ward (or to the husband, as the case may require) all the property of such ward, in his hands, including bonds and other securities, and on failure he shall be liable to an action on his bond, and to fine and imprisonment for a contempt of said court.

On request made, the court shall direct inquisition to be had.

SEC. 136. The orphans' court of each county in this state is hereby authorised and empowered, in their respective counties, on request made by the friends or relations of any idiot, lunatic or person *non compos mentis*, or by the overseer of the poor, for the district in which such idiot, lunatic or person *non compos mentis* resides, by writ to direct the sheriff of the said county to summon twelve good, discreet and lawful men of the county, and neighborhood of the residence of such person to make inquisition thereto on oath; and if the person said to be an idiot, lunatic or *non compos mentis*, shall be adjudged, by such inquest (or a majority of them) to be incapable of taking care of himself or herself, they shall certify the same under their hands and seals to the orphans' court, and the said orphans' court shall appoint some suitable person or persons to be guardian or guardians to such idiot, lunatic, or *non compos mentis*; directing and empow-

To appoint guardian.

ering such guardian or guardians to take care of the person and estate, both real and personal, of such idiot, lunatic or *non compos mentis*. And the said guardian or guardians shall make a true and perfect inventory of the said estate, and return the same, within the same time, and account with the orphans' court as often, and in the same manner as guardians to orphans are before directed by this act, and shall give bond and security in like manner; and the said court shall have the same power and control over such guardian or guardians, to all intents and purposes, as over guardians to orphans.

Duty and power of guardian.

Further duty of guardian.

SEC. 137. It shall be the duty of such guardians, to improve frugally, and without waste or destruction, the estate of the idiot, lunatic or person *non compos mentis*, and apply the income and profits thereof to the comfortable maintenance and support of such idiot, lunatic or *non compos mentis*, and of his household or family, (if any there be;) and the said guardian or guardians are hereby empowered to collect, sue for and recover, all just debts due to such idiot, lunatic or *non compos mentis;* and they shall also be subject to the payment of all just debts owing by such person, which were contracted when he or she was of sound mind, and before his or her lunacy or distraction, out of the personal estate, or if that be insufficient, then out of the real estate, in such way and manner, as executors and administrators may by law discharge the debts of deceased persons, when the personal estate of the testator or intestate is insufficient. And the said guardian or guardians shall have the same power and authority, by order of the orphans' court, to sell the lands, tenements and hereditaments of any idiot, lunatic or *non compos mentis*, for the purpose aforesaid, as by this act is given to executors and administrators, in similar cases, observing the same rules and restrictions; and the deed or deeds of conveyance of such guardian or guardians, shall have the same force, effect and validity to all intents and purposes.

By order of court to sell lands.

SEC. 138. If any such idiot, lunatic or *non compos mentis*, shall be restored, to the use of his or her reason, and sanity of mind (and the same be made appear to the orphans' court, who shall judge thereof,) on application to said court, the residue and remainder of his or her estate, both real and personal, shall be returned and delivered to him or her; the guardian or guardians having such reasonable allowance for their care, charge, and trouble, as the court shall order.

When idiot &c. restored, estate to be delivered to him.

SEC. 139. The appointment of an attorney and counsellor at law, to the office of judge of probate, shall not deprive such attorney and counsellor at law, of the right to practise in his profession in any court of law or equity in this state, except the court of which he is judge: *Provided*, That he shall not be at liberty to prosecute or defend, or in any manner advise either party, in any matter, cause or controversy, which he may have decided, and on which an appeal or other proceedings are had,

Attorney, tho' judge of probate, may practise.

Proviso.

in any other court in the state. And if any judge of probate shall aid, abet, counsel or advise in any such matter, cause or controversy, he shall be deemed guilty of a high misdemeanor, and may for the same be removed from office.

Judge of probate, when disqualified to act.

Sec. 140. Whenever there shall be so near a relation between any deceased person, and the judge of probate of the county in which letters testamentary or of administration have been or ought to be granted according to the provisions of this act, as between father and son, by nature or marriage, or brother in like kind, or whenever a judge of probate shall be interested in the estate of any deceased person, as being legatee, devisee, or distributee, such judge shall be disqualified to act in the settlement of such deceased person's estate, and the cognizance thereof shall appertain to the judge of probate in an adjoining county, and who resides nearest to the residence of the judge so disqualified; and the judge so residing in an adjoining county, shall in every such case, have full authority to proceed to a final settlement of the estate of such deceased person, and shall cause his proceedings therein to be recorded in the register's office of the county, from which such case shall have been removed.

Cognizance to appertain to judge in adjoining county.

Compensation.

Sec. 141. Until otherwise provided by law, the judge of probate shall receive the fees hitherto allowed the chief justice of the county court in similar cases.

This act, when to take effect.

Sec. 142. This act shall commence and be in force from and after the first day of February next, and all acts and parts of acts, respecting wills and testaments, the duties of executors, administrators and guardians, and the rights of orphans and representatives of deceased persons, shall be, and the same are hereby repealed.

CHAPTER 10.

An act, to amend the "act, to reduce into one the several acts concerning last wills and testaments, the duties of executors, administrators and guardians, and the rights of orphans and others, representatives of deceased persons."

Passed June 30, 1822.

Suit against executor &c. not to abate on the representation of the estate insolvent.

Sec. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi in general assembly convened,* That in case any suit shall be pending against an executor or administrator, at the time he, she or they shall represent the estate of the testator or intestate insolvent, such suit shall not abate, or be dismissed, in consequence of such insolvency, but the plaintiff proceed to trial and judgment. No execution shall issue on such judgment against any such insolvent estate, but shall and may be filed, as a claim against the estate of such testator or intestate, any thing contained in the 103d section of the act to which this is an amendment, to the contrary notwithstanding.

Division of personal estate.

SEC. 2. The orphans' court shall order a division of personal estate among heirs or legatees in the same manner, and subject to the same regulations as are prescribed for the partition of real estate among them; and the commissioners appointed for that purpose, shall be commissioners for the division of both real and personal estate.

Office of register abolished.

SEC. 3. The office of register of the orphans' court shall be, and the same is hereby abolished; and the judge of probate in each county shall enter into bond, and take the oath required of the register, and shall perform all the duties which the register is required to perform, and receive the like compensation according to the provisions of the above recited act.

CHAPTER 11.

An act, concerning the establishment, jurisdiction and powers of inferior courts of law, in the several counties of this state.

Passed June 28, 1822.

Court established.

Style.

Oath of the justices.

(*See Chap: 59 sec. 3.)

SEC. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi in general assembly convened,* That there shall be established and held in the several counties of this state, an inferior court of law, to be styled "The County Court of the county of ;" the judge of probate in each county, shall be the presiding justice of said court; and there shall be, in the manner directed in the constitution, two associate justices of said court appointed, who, before they enter on the duties of their office, shall, respectively, be commissioned by the governor, and shall take and subscribe the oath prescribed in the constitution,* before a judge of the supreme court, or any justice of the peace of the county, for which they are respectively appointed and commissioned; which oath shall be endorsed on their commissions, and together with the commission, recorded on the minutes of the court for which they are appointed, at the first term thereof, held after the passage of this act.

Continuance in office.

Compensation and privileges.

SEC. 2. The justices of the county court shall continue in office during good behavior, and may be removed by the governor, on the address of two-thirds of each house of the general assembly, or by impeachment according to the provisions of the constitution: they shall severally receive for their services, the sum of three dollars for each day they are actually attending, to hold a court according to law, which shall be paid out of the treasury of the proper county, on the certificate of the clerk of said court, of the service rendered; and they shall, moreover, be exempt from serving on juries, and from militia duty in time of peace; and for the other duties which they are authorised or required to perform, they shall receive the compensation specified in the general table of fees.

Clerks.

Sec. 3. The clerks of the several county courts now existing in this state, shall be clerks of the county courts established by this act, in their respective counties, subject to the same duties, and liable to the same penalties, as clerks of the county courts, who may be hereafter appointed.

Vacancies in the office of clerk how filled in term time.

Oath and bond;

In vacation.

Sec. 4. Every vacancy in the office of clerk of a county court, shall be filled by appointment of the justices of the court in which the vacancy may happen, in the following manner: in term time, the appointment shall be made by an order entered of record in the minutes of the court, and the person so appointed, before he enter on the duties of his office, shall take the oath prescribed in the constitution, in open court, or before any justice thereof, and shall enter into bond, with two sureties, to be approved by the court of which he is clerk, payable to the governor of the state for the time being, and his successors in office, in the penalty of five thousand dollars, conditioned for the faithful performance of the duties of his office, and that he seasonably record all deeds, and other instruments of writing, required by law to be recorded in his office, and also, all judgments, decrees, and orders of said court, and safely to keep all records, minutes, books, papers, presses, and whatever belongs to said office of clerk, and deliver over the same to his successor in office; which bond shall be recorded in the clerk's office of said court, and immediately thereafter shall be deposited by the presiding justice of such court, in the office of the secretary of state, and shall not be void on the first recovery, but may be put in suit and prosecuted at the costs, and charges of any party injured, until the whole amount of the penalty thereof be recovered: In vacation, the appointment shall be made by commission, under the hands and seals of a majority of the justices of the county court; and the persons so appointed, shall execute bond with security, as above prescribed, and produce the same to the presiding justice of said court, for his approbation; if he approve it, he shall endorse his approbation thereon, administer the proper oath of office, and endorse his certificate thereof, also, on the bond; and he shall also cause the bond with the endorsements thereon, to be recorded as aforesaid, and shall deposite the same in the office of the secretary of state; which bond may be put in suit and prosecuted in the like manner, as is before directed in the case of a bond taken in open court.—An authenticated copy of any such bond shall be received in evidence, in any court of law or equity of this state, in the same manner as the original would be, if it were present in court.

Continuance in office

Sec. 5. The clerks of said courts shall hold their offices during good behavior, but may be removed therefrom, for neglect of duty or misdemeanor in office, by the supreme court, in the same manner in all respects, as clerks of the circuit courts may be removed.*

(*See Chap. 13 sec. 11.)

May appoint deputies:

Sec. 6. The clerks of the said courts shall have power to appoint deputies, with the approbation of their several courts, who shall take the oath of office; and thereupon, such deputies shall have full power and authority to do and perform all the several acts and duties enjoined upon their principals. And the clerks of said courts shall keep their offices at the court-houses of the counties in which they are, or may be clerks.— But, in all cases where offices have not been provided for the clerks of the said courts, such clerks may keep the records, books and papers, belonging to their offices, at such places, as the justices of the county court shall think fit, and so enter of record.

Office, where to be kept:

Clerks *pro tempore*

Sec. 7. During the vacancy in the office of clerk of a county court, and during the unavoidable absence of the principal clerk, and his deputies, if any he have, the court, in term time, or the presiding justice thereof, in vacation, may appoint a clerk *pro tempore*, who, after taking the necessary oath of office, shall be authorised to perform the duties of a clerk, and during his continuance in office, shall be entitled to all the fees thereof.

In case of vacancy papers to be delivered to the successor

Sec. 8. Whenever the office of clerk of any county court shall become vacant by any cause whatsoever, the records, papers, books, stationery, and every thing belonging or appertaining to said office, shall be demanded, delivered over, and received in the manner, and (in case of refusal or detention,) under the penalties prescribed in the fourteenth section of the act, entitled "An act, to reduce into one the several acts, and parts of acts, concerning the establishment, jurisdiction, and powers of the superior courts of law."

Penalty for altering record

Sec. 9. If any clerk of a county court shall willingly make any false entry, or raze a letter, or change any record in his keeping, belonging to his office, every such clerk, so offending, shall, on conviction thereof, be fined and imprisoned at the discretion of the court, and shall moreover be liable to the action of the party aggrieved.

Clerks may administer oaths in certain cases:

Sec. 10. The several clerks of the county courts in this state, and their deputies, shall be, and they are hereby empowered to administer oaths or affirmations, in all cases wherein an affidavit is necessary as the foundation of any official act to be performed by any such clerk; which affidavit shall be filed, and shall in all respects, be as effectual as if the oath thereto had been administered by a justice of the peace. And if any person sworn by any such clerk or his deputy, by virtue of this act, shall give any evidence, under such circumstances as would have constituted the same to be perjury, if done in presence of a court of record, the same shall be deemed perjury to all intents and purposes.

Time and place of holding courts in each county

SEC. 11. There shall be held in each county of this state, at the court house thereof, or at such other place as the courts are by law directed to be held, a county court, four times in each year, on the days, and may continue for the term herein after specified, that is to say:—In the county of Hinds, on the third Mondays of January, April, July and October, and may continue four days and no longer; in the county of Warren, on the first Mondays of February, May, August and November, and may continue four days and no longer; in the county of Claiborne, on the second Mondays of February, May, August and November, and may continue four days, and no longer; in the county of Jefferson, on the first Mondays of January, April, July and October, and may continue four days, and no longer; in the county of Franklin, on the third Mondays of February, May, August and November, and may continue four days, and no longer; in the county of Adams, on the first Mondays of March, June, September and December, and may continue six days, and no longer; in the county of Wilkinson, on the first Mondays of January, April, July and October, and may continue four days and no longer; in the county of Amite, on the first Mondays of March, June, September and December, and may continue four days, and no longer; in the county of Pike, on the second Mondays of March, June, September and December, and may continue four days, and no longer; in the county of Lawrence, on the first Mondays of March, June, September and December, and may continue four days, and no longer; in the county of Marion, on the fourth Mondays of March, June, September and December, and may continue four days, and no longer; in the county of Covington, on the fourth Mondays of January, April, July and October, and may continue four days, and no longer; in the county of Green, on the first Mondays of January, April, July and October, and may continue four days, and no longer; in the county of Perry, on the third Mondays of January, April, July and October, and may continue four days, and no longer; in the county of Hancock, on the second Mondays of January, April, July and October, and may continue four days, and no longer; in the county of Jackson, on the fourth Mondays of January, April, July and October, and may continue four days, and no longer; in the county of Wayne, on the third Mondays of January, April, July and October, and may continue four days, and no longer; and in the county of Monroe, on the first Mondays of January, April, July and October, and may continue four days, and no longer.

Failure of a majority of the justices to attend.

SEC. 12. A majority of the justices of said court, in each county, shall be necessary to constitute a court; and in case a sufficient number should not attend on the first day of the term, the sheriff of the county may adjourn the same from day to day for two days; and if from any cause a county court shall not be held at any term thereof, or shall not continue to sit the whole term, or before the end of the term shall not have heard and determined all matters ready for their decision, then all process, pleadings, and proceedings of what nature soever, remaining in said court, pending and undecided, shall stand continued of course, until the next succeeding term; and if from any cause, the court shall not sit on any day in a term after it shall have commenced, there shall be no discontinuance, but the court may proceed to business on any subsequent day until the end of the term, if the business before said court be not sooner finished.

Special terms.

SEC. 13. The presiding justice of the county court, shall have power, if necessary, to order a special term of said court, to be holden for regulating county police, and the trial of appeals from justices of the peace; but, at such term, no cause originating in said court, and depending therein, shall be heard or determined. The clerk of said court, shall, on receiving the written order of the presiding justice, for that purpose, publish by advertisement at the door of the court house, and at two other public places in his county, the day on which a special term of said court will be held, which shall not be less than ten days after the same shall have been ordered: *Provided*, That such special term may continue for two days and no longer, and shall not be construed to possess the power given to the several county courts, for the trial of slaves.

Jurisdiction of the court.

SEC. 14. The county courts in the several counties of this state, shall have original jurisdiction of all suits and actions for the recovery of money, founded on any bond, bill, promisory note, or other written contract, covenant or agreement whatsoever, or on any open account, where the sum demanded shall exceed twenty dollars, and shall not exceed fifty dollars, including all interest due thereon; and shall have power to hear and determine all prosecutions, in the name of the state, against any slave or slaves, charged with felony, committed within their respective jurisdictions; and in such cases, shall have and exercise all the powers incident to a court of oyer and terminer; and generally, to do and perform all other acts, and exercise all other powers lawfully pertaining to a county court within this state.

Suits for sums above or below the jurisdiction how disposed of

SEC. 15. If any suit shall be commenced in any county court for a less or greater sum, than such court can legally take cognizance of, or if any person shall demand a greater sum than is due, on purpose to evade this act, in either case, the plaintiff shall be non-suited and pay costs: *Provided always*, That if the plaintiff or any other person for him, will make an affidavit, (to be filed in the clerk's office) that the sum for which the suit is brought is really due, but that for want of proof, or that the time limited for the rocovery of any particular article, bars a recovery; or in case the sum recovered shall be greater than said court can legally take cognizance of, if affidavit shall be made and filed, as aforesaid, that at the time such suit or action was commenced, the sum due did not amount to more than fifty dollars; in either case, such plaintiff shall have a verdict and judgment for what appears to be legally proved; any thing herein to the contrary notwithstanding: *And, provided also,* That nothing herein contained shall extend, or be construed to extend to suits on bonds, penal bills, or any other action of debt, grounded on a penalty, where the balance due on such bond or penal bill or other action of debt, as aforesaid, is of less value than the sum of twenty dollars.

In what county suits shall be commenced.

How brought to issue and tried.

Provision as to freeholders.

SEC. 16. All actions and causes which may be instituted in any of the courts aforesaid, shall be commenced in the county in which the defendant may be found; and all actions so commenced, may be brought to issue, according to the rules that may be established for the orderly conducting and arrangement of business in the circuit courts of law; and if the said issue be an issue in fact, the same shall be tried by the jurors attending the said county courts, at the next succeeding term, if there be time for the trial thereof, and the same be not continued by order of court: *Provided always,* That if a freeholder of this state be sued out of the county of his freehold and residence, the *venue* shall be changed by order of the court, to the county of his residence and freehold; and no freehholder of the state shall be held to bail out of the county of his freehold and residence.

Test, execution and return of process.

SEC. 17. All process shall be tested in the name of the presiding justice of the county court of the county within which the same may issue, and bear teste on the first day of the term next preceding that to which the same may be made returnable; and the clerk issuing the same shall mark thereon the day on which it shall be issued, and the sheriff or other officer receiving the same, shall mark thereon in like manner, the day he shall have received it; and every clerk, sheriff or other officer neglecting so to do, shall forfeit and pay the sum of one hundred dollars, to be recovered by action of debt in any court of record having cognizance thereof, with costs, by any person who shall sue for the same. And all original process, and all subsequent process thereupon, to bring any person or persons to answer to any action, suit, or cause in any county court, (*subpœnas* for witnesses excepted, which may be issued in term time, and made returnable immediately,) shall be issued and signed by the clerk of such court, with the seal of office thereto affixed, and shall be returnable on the first day of the term next succeeding that at which the same shall bear teste, and shall be executed at least five days before the return day thereof; and any writ or process, except as aforesaid, which shall issue within five days before the commencement of the term of any court, shall be made returnable to the term next after that to be held within five days as aforesaid, and not otherwise; and all writs and process issued, made returnable or executed in any other manner, or at any other time than is herein before directed, may be abated upon the plea of the defendant.

SEC. 18. Whenever the presiding justice of any county court, shall be either plaintiff or defendant in any suit or action commenced, in such court, all process in such suit or action shall bear teste in the name of the clerk of the county court, wherein such suit or action may be commenced, any thing in this act to the contrary notwithstanding.

Teste when presiding justice is party.

SEC. 19. All suits and causes instituted in said courts, either by *capias ad respondendum*, summons or attachment, shall be brought to issue, and proceeded on to final judgment, and execution may issue thereon, in the same manner and according to the rules of proceeding, as near as may be, in all respects whatsoever, which are prescribed in the act, entitled "An act, to reduce into one the several acts, and parts of acts, concerning the establishment, jurisdiction and powers of the superior courts of law;" and the duties of the clerks of the several county courts, and of the sheriffs of said counties, and all other officers required by law to attend said courts, shall conform to, and be executed and performed in the same manner, and under the like penalties for failing or neglecting to execute and perform such duties, as is provided in the above recited act, so far as the same are applicable, and not inconsistent with the provisions of this act.

Suits to be proceeded in as in the cir. court.

SEC. 20. The said court shall have control over all the proceedings in the clerk's office, during the preceding vacation, and may correct any mistakes or errors which may have happened therein, and may for good cause shewn, set aside any of the said proceedings, and make such order concerning the same as may be just and right; and may also, for good cause shewn, reinstate any suit or action discontinued during such vacation.

Control of the court over the proceedings in the clerk's office

SEC. 21. It shall be the duty of the clerk of each county court in this state, to take a correct copy of the list of freeholders, and householders, returned, into the office of the clerk of the circuit court of his county, by the assessor and collector according to law; which copy shall be filed in the office of the clerk of the county court of each county, and the names on such list, shall be put on small slips of paper, and deposited in a box to be kept by the clerk for that purpose; and there shall be drawn by the clerk and sheriff, in open court, at every term of said court, from said box, one by one, the names of fifteen persons to serve as jurors at the next succeeding term of said court; and the names of the jurors, so drawn, shall be entered on the minutes of the court, and the clerk shall issue a *venire facias* accordingly, returnable to the next term of said court; and it shall be the duty of the sheriff, at least five days before the term, to summon the jurors named in such *venire facias*, either by giving them personal notice, or by leaving a written

Jurors how to be drawn.

How summon'd

notice at their usual place of abode, to attend according to such summons; and every juror, being summoned as aforesaid, who shall not attend, shall be liable to a fine not exceeding fifty dollars, unless good cause for his non-attendance be shewn, on or before the first day of the regular term of the court next after such default, or before final judgment on a *scire facias* issued against such defaulting juror; and if good cause be shewn, the fine, so imposed, shall be remitted without payment of costs.

Fine for non-attendance.

How drawn when court has not been held.

SEC. 22. Whenever any county court shall not have been held in any county in this state, as required by law, the clerk and sheriff shall, in the recess of the court, in presence of a justice of such court, at least thirty days previously to the next term of said court, proceed to draw, one by one, from the jury box, the number of jurors required for said court; and if any justice of the county court shall neglect or refuse to attend for the purpose aforesaid, having been by the sheriff thereunto required, then it shall be the duty of the clerk and sheriff to draw the same, and the clerk shall issue a *venire facias* for the persons so drawn to serve as jurors, as if the same had been done in open court.

Rules respecting jurors.

SEC. 23. In all cases not herein particularly provided for, the said court, shall, as near as may be, conform to, and be governed by the rules and regulations respecting jurors, in force and practice in the several circuit courts of law in this state, except such as relate to grand jurors, and trials in criminal prosecutions.

Appeals, how taken.

SEC. 24. Any party, either plaintiff or defendant, in any suit or action commenced in any county court, who shall think him or herself aggrieved by the final judgment or decision of said court, may appeal therefrom as of right, within the term at which such judgment or decision shall have been rendered, to the next term of the circuit court of the county wherein such judgment or decision may have been pronounced; and the party praying such appeal, shall, before the same is granted, enter into bond with good and sufficient security, to be approved by the court, in such penalty as said court shall direct, with condition that the appellant shall prosecute his or her appeal to effect, and pay and satisfy the appellee the amount of the judgment, with interest and damages, which may be awarded against such appellant, in the circuit court, and all costs which shall have accrued, or may thereafter accrue in such suit or action; and every such appeal shall in all other respects, be conducted and governed in the manner prescribed in the sections one hundred and fifty four and one hundred and fifty five, in the act, entitled "An act, to reduce into one the several acts, and parts of acts, concerning the establishment, jurisdiction and powers of the superior courts of law."

How conducted

Clerk to make up record and

SEC. 25. When any appeal shall be granted on any judgment or decision of a county court, the clerk of such court shall immediately make up a full and perfect record of all the proceedings in such cause, and shall, on the application of either party, give to such party an attested copy of such record, with a taxation of all costs which have accrued therein, and shall endorse on such copy the day on which the same was demanded, and the day on which it is delivered, and sign his name as clerk thereto; and if by reason of the neglect or delay of any clerk to give a transcript of a record in any cause, as aforesaid, the same shall not be filed in the circuit court in due time; or if the record be erroneously or incorrectly made up, so that the circuit court cannot proceed thereon to trial and a final decision, such clerk shall in eitheir case, upon conviction thereof before any court of competent jurisdiction, be adjudged guilty of a misdemeanor in office, and shall be fined in a sum not exceeding one hundred dollars, to the use of the party entitled to such attested copy, and shall, moreover, be liable in an action on the case for all damages which such party may sustain by reason of such neglect or delay: *Provided*, That if the circuit court should be of opinion, that there is sufficient matter of substance in the transcript of the record and proceedings on any appeal, to enable them to proceed thereon to trial and a final decision, the same shall not be dismissed for want of form; any thing herein contained to the contrary notwithstanding.

deliver transcript to either party on application.

Liability of clerk for neglect.

Proviso.

Sec. 26. No suit or action commenced in any county court, shall be removed into the supreme court, by writ of error, *supersedeas*, *certiorari* or otherwise, either before or after final judgment, except the same be first removed into the circuit court by appeal or *certiorari*, in the manner provided for by law, and the final judgment of such circuit court had thereon; nor, shall any proceedings had before a justice of the peace, for the recovery of any debt or demand within the jurisdiction of such justice, be otherwise re-examined and reversed or affirmed, than by appeal to the county court of the county for which such justice of the peace shall have been appointed: *Provided*, That if it shall appear to the circuit court, on any appeal from the county court by plea to the jurisdiction, or, by the finding of the jury, that said county court had not jurisdiction of the suit or action, on which such appeal was taken, judgment shall be rendered for the defendant, in like manner as such judgment ought to have been rendered in the county court.

Suits not to be removed to the supreme court, except first removed to the circuit court.

Sec. 27. A transcript of the record, in all appeals from a justice of the peace to the county court, shall be delivered to the clerk of said court, on or before the first day of the term to which the same is returnable, who shall thereupon enter the same on his docket in proper order, and, on the application of either party, issue, *subpœnas* for such witnesses as may be required: and such appeals shall be heard and determined by said court in a summary way, according to the provisions of the act, entitled "An act, concerning the appointment, jurisdiction and powers of justices of the peace within this state;"* and if such tran-

Transcript in appeals from justices of the peace.

(*See Chap. 8 sec. 19, 20)

script of the record be not delivered to the clerk of the county court, as aforesaid, the judgment of the justice of the peace shall be and remain in full force, and execution may issue thereon accordingly.

Minutes to be read &c.

SEC. 28. And, for preventing errors in entering the judgments of said county courts, the justices thereof, before any adjournment, shall cause the minutes of their proceedings to be publicly read by the clerk, and corrected, where necessary, and then the same shall be signed by the presiding justice, or in his absence, by any one of the justices then sitting; which minutes, so signed, shall be carefully preserved among the records; and no proceedings or judgments of any county court shall be of force, or valid, until the same be so read and signed.

Court may punish for contempt

(*See Chap. 13 sec. 177)

SEC. 29. The several county courts shall have power to punish any person, who may be guilty of a contempt of such court, in like manner, as if such contempt had been commited against a circuit court of law.*

Justices to be conservators of the peace.

(*See Chap. 8 sec. 3—6)

SEC. 30. The justices of the county courts in the several counties of this state, shall be conservators of the peace, within their counties respectively, and shall have the like power by warrant, to cause any person or persons charged with a criminal offence, to be arrested, and to take all manner of recognizances returnable into the court having jurisdiction thereof, as is given by law, to justices of the peace in each county;* and also, to solemnize the rites of matrimony, and to take the proof or acknowledgment of deeds and other instruments of writing, in the manner directed in the act, concerning conveyance: for which services they shall receive the compensation specified in the general table of fees.

Sheriff to attend court and execute process

SEC. 31. All process issuing out of a county court shall be executed and returned by the sheriff of the proper county, in like manner as if the same had issued out of a circuit court of law; and the sheriff of each county shall attend on the county court of his county, and perform all the duties required of him by law, by virtue of his office, and execute all sentences which may be pronounced by said court, and shall also summon one constable of his county, to attend at each term of said court, who shall attend accordingly, or pay a fine, to be assessed by the court, not exceeding ten dollars.

Motions against sheriffs and attorneys.

SEC. 32. The said courts shall have power to hear and determine all motions, on reasonable notice to the adverse party against sheriffs, coroners, or other officers, for money received under execution or other process or order of such court, which shall not be paid to the party entitled to the same, his agent or attorney, on demand; and all motions against attorneys and counsellors at law, for failing or refusing to pay money received for their clients, in any cause instituted in said courts; and to give judgment according to the statutes in such case made and provided,* and award execution thereon accordingly, any thing in the "Act, concerning attorneys and counsellors at law," to the contrary notwithstanding.

*(See Chap. 27 sec. 49, Chap. 41 sec. 9)

Examination of clerk's office.

Sec. 33. The said courts shall, once in every year, appoint one or more of their own body, to examine into the condition of the clerk's office of such county, who shall make a report to the court during the term at which such appointment shall be made, specifying therein the state in which the papers, books, records, and proceedings, belonging to said office, are found; and if it shall appear by such report, that any clerk has neglected to record any deed, or other instrument of writing proper to be recorded in his office, within a reasonable time after the same shall have been lodged with such clerk, to be recorded, or has failed to make out and keep a correct index to the matters recorded in each and every book, or has neglected to keep in regular order all the papers belonging to his office, keeping every document in its proper file, and the papers of each suit together, or has neglected to have complete records made up in due form, in all causes in which a final judgment may have been rendered, within three months after the judgment in such cause; in every such case, the clerk so offending shall be deemed guilty of a misdemeanor, and may, for the same, be removed from office; and shall, moreover, be liable to any party injured, for all damages which may be sustained by the default or negligence of such clerk.

Liability of clk. for neglect of certain duties.

Justices not to hold certain offices.

Sec. 34. No justice of the county court shall, during his continuance in office, hold the office of county treasurer, county surveyor, ranger, or justice of the peace.

Erection of court houses & jails.

Sec. 35. From time to time, hereafter, the county court of every county within this state, shall cause to be erected and kept in repair (or where the same shall be already built, shall maintain and keep in good repair) within each respective county, and at the charge of such county, one good and convenient court house, of stone, brick or timber, and one common jail or county prison, well secured with iron bars, bolts and locks; and also, one pillory, whipping post and stocks; and every jail so to be erected, shall consist of three apartments at least; one of which shall be appropriated to the reception of debtors.

Materials and ground for C. house and jail.

Sec. 36. Every court house and jail to be erected as aforesaid, shall be formed of such materials, and be of such dimensions, as shall de directed by the justices of the county court, or a majority of them, in each county; who are hereby authorised to accept as a gift, or to purchase for the use of the county, so much ground in the towns or other places where the courts may be ordered to sit, as they may judge convenient and necessary whereon to build all or any of the structures aforesaid;

which purchase money shall be paid by the proper county, and laid in the county estimates.

Justices to appoint commissioners to superintend their erection.

SEC. 37. The said justices or a majority of them in every county, shall appoint two respectable citizens of the county, commissioners to plan and carry into effect, by drawing the draught, superintending the foundation, and erecting and completing of every court house and jail, respectively. And for the faithful discharge of their duty in this behalf, the said commissioners shall enter into bond in the sum of five hundred dollars, with sufficient sureties, payable to the presiding justice of the county court and his successors in office, for the use of the county, conditioned well and truly to account with the said court, as often as they may be thereunto required, for the disposition of all money or other property, by them received from time to time, from the said court or the county treasurer, or any other person, or by any means whatever, for the purpose of building the said court house and jail, in the county to which the commissioners may respectively belong; and on default in the commissioners for want of attention or competent knowledge to carry on the work with propriety, or in case of death, resignation or removal, the said justices or a majority of them, shall have power to discharge one or both of them, so in default as aforesaid, and appoint others to fill the vacancy occasioned thereby, or by reason of such death, resignation or removal. The said commissioners shall receive such compensation for their services as the court by which they were appointed may deem reasonable; and the money required for the purposes aforesaid shall, from time to time, be assessed on the county wherein the same may be expended, by the county court of such county, and paid on the certificate of said court, out of any money in the county treasury, not otherwise appropriated.

Their bond.

Compensation.

Assessment of the money required.

Prison bounds and rules.

SEC. 38. Every county court shall be, and they are hereby empowered and required, to mark and lay out the bounds and rules of their respective prisons, not exceeding ten acres of land, adjoining to such prison; which marks and bounds shall be recorded, and renewed or altered, from time to time, as occasion shall require; and every prisoner not committed for treason or other felony, giving good security to keep within the said rules and bounds, shall have liberty to walk therein, out of the prison, for the preservation of his or her health, and keeping continually within the said bounds, shall be adjudged in law a prisoner: *Provided*, That the privilege hereby granted, shall not be construed to extend to any person or persons, who shall be imprisoned for a criminal offence, under the sentence of any court of competent jurisdiction.

Examination of prisons.

SEC. 39. It shall be the duty of the justices of the county court, at the beginning of every stated term, to examine into the state of the prisons in their respective counties, with regard to the sufficiency of such prisons, the condition and accommodation of the prisoners; and they shall, from time to time, take such legal measures as may best tend to secure the prisoners from escape, sickness and infection; and to have the jails cleansed from filth and vermin; and if it shall appear to such court, that the sheriff or jailor hath neglected or violated his duty, in the manner of keeping or furnishing any prisoner in his custody, or otherwise, it shall be lawful for such court to punish him, as for a contempt, in any sum not exceeding fifty dollars for each offence.

Court may punish jailor for neglect of duty.

Expences incurred for want of sufficient jail

Sec. 40. All expenses which may be incurred for guards employed for the safe keeping of criminals, in the several counties of this state, and all other legal expenses which shall accrue from the want of a good and sufficient jail, shall be paid out of the treasury of the proper county, upon the certificate of the clerk of the circuit court of such county, that the allowance thereof hath been made by such court.

Commitment of offenders when there is not a sufficient jail in the county where offence was committed.

Sec. 41. When any person or persons shall be charged with any criminal offence wherein bail is not admissible, or where the offender or offenders shall neglect or refuse to give security for his, her, or their appearance, it shall be lawful to commit such offender or offenders to the nearest jail of some adjacent county, provided there is not a sufficient jail in the county in which the offence was committed, there to be kept until the court shall sit in the proper county for the trial of such offender or offenders; and it shall be the duty of the sheriff or jailor, to receive any person or persons sent from any county in which there is not a sufficient jail, for safe keeping, upon the mittimus of any judge, justice of the county court, or justice of the peace, of the county from which such person or persons are sent.

Allowances for supplying clk's office.

Sec. 42. The county courts respectively, shall make allowances of the sums of money necessary for supplying the clerks' offices, with books, tables, and presses, to be paid out of the county treasury of the proper county.

Seal.

Sec. 43. It shall be the duty of the clerk of each county court within this state, to procure for the use of their courts respectively, a seal with the style of the court around the margin thereof, and an eagle in the centre, unless the same be already provided; and the sum necessary to procure such seals, shall be paid out of any money in the treasury, of the proper county not otherwise appropriated.

Accts. against the county how audited, &c.

Sec. 44. The county court of each county within this state, shall in term time, audit and allow, on due proof, all accounts and demands legally chargeable upon their respective counties; and every account, or such part, and so much thereof as is so allowed, shall be recorded by the clerk in a book to be kept for that purpose; and the claimant shall receive a warrant on the county treasurer, signed by the clerk, with the seal of office thereto affixed, for the amount so allowed; and the clerk shall number the warrants issued as aforesaid, in each year, beginning in the term first held in each year, and progressing through the same in numerical order, and register the number and amount of each warrant in the aforesaid book, and transmit to the auditor of public accounts, annually, the numbers, amounts and names of claimants of all such warrants, and an abstract of the items or services, for which the said warrants were issued; and the result of the said account shall be entered in the books of the auditor of public accounts, and the account thereof, laid before the legislature annually, with his other accounts.

CHAPTER 12.

An act, to establish a court of chancery in this state, and to prescribe the rules of proceeding therein.

Passed November 27, 1821.

Court established. Style. To consist of one judge. His salary.

SEC. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi, in general assembly convened*, That there shall be established in this state, a court to be styled "The Superior Court of Chancery of the state of Mississippi;" which court shall consist of one judge, to be appointed according to the constitution, and denominated "the Chancellor of the state of Mississippi," who shall hold his office during good behavior, and shall receive for his salary, two thousand dollars, payable quarter-yearly at the treasury of the state.

Jurisdiction of the court, and power of the chancellor.

SEC. 2. The said court shall have exclusive jurisdiction over all matters, pleas and plaints, whatsoever, belonging to or cognizable, in a court of equity; and the chancellor shall have power, either in vacation or term time, to grant writs of injunction to stay waste, to enjoin execution of a judgment, or to stay proceedings at law; to grant writs of *ne exeat* and all other remedial writs, returnable into said court, and properly belonging to a court of chancery, and to hear and determine the same according to the rules of proceeding hereinafter prescribed.

Oath. (*See chap. 55. sec. 3.)

SEC. 3. The chancellor, before he enters upon the duties of his office, shall take and subscribe the oath prescribed in the constitution;* which oath may be taken before the governor or any judge of the supreme court, to be certified on the back of his commission, and recorded together with the commission in the court first held by him; and if any person appointed as aforesaid, shall execute the office of chancellor, without having taken the said oath, he shall forfeit and pay the penalty of two thousand dollars to the state, for the benefit of the literary fund; to be recovered by action of debt in any court of competent jurisdiction.

The state divided into two districts.

Sec. 4. The state shall be divided into two districts, and a court of chancery shall be holden by the chancellor, in each district, in the manner, and at the times hereinafter mentioned; that is to say: The counties of Hinds, Warren, Claiborne, Jefferson, Franklin, Adams, Wilkinson, and Amite, shall compose the western district, and a superior court of chancery shall be holden therefor at the court-house of Adams county, on the second Monday of January, and on the second Monday of July, in each and every year, and shall continue for six weeks at each term, if the business in said court be not sooner completed.—The counties of Pike, Lawrence, Marion, Covington, Perry, Green, Hancock, Jackson, Wayne, and Monroe, shall compose the eastern district, and a superior court of chancery shall be holden therefor, at the court-house of Marion county, on the third Monday of February, and on the third Monday of August in each and every year, and shall continue for four weeks at each term if the business in said court be not sooner completed.

What to compose the western district.

What to compose the eastern district.

Time and place of holding court

All chancery cases now depending in the superior courts transferred to the court of chancery.

Sec. 5. All suits and controversies now depending in any superior court in this state, the jurisdiction and decision of which appertain to a court of chancery, shall be and the same are hereby transferred to the superior court of chancery, of the district wherein such suits and controversies are depending; and it shall be the duty of the clerks of the superior courts of the several counties, respectively, to deliver to the clerk of the superior court of chancery of the proper district, all minutes, records, papers and vouchers, belonging to or filed in any suit in chancery, depending in said superior courts, on the application of the clerk of the superior court of chancery; and such clerk shall sign a receipt, specifying the minutes, records, papers and vouchers so delivered, and shall keep and preserve the same in his office. And all suits and controversies so transferred, shall be entered on the docket of the superior court of chancery of the district, in which the same may be cognizable, in proper order, and shall be proceeded on to final decision, in the same manner as if they had been originally commenced, in said superior court of chancery. And all writs, process, and other proceedings in chancery, returnable to any of the said superior courts, and not returned, shall be returned by the proper officer to whom the same is directed, to the first term of the superior court of chancery of the proper district, and the like proceedings shall be had thereon, as in other cases returnable to the said superior court of chancery.

All chancery proceedings returnable to any of the superior courts, to be returned to the court of chancery.

Adjournment of court on failure of chancellor to attend.

Sec. 6. If the chancellor shall not attend on the first day of the term, such court shall stand adjourned from day to day, until a court be made, if that shall happen before four o'clock in the afternoon of the sixth day. And if a court shall not sit in any term, or shall not continue to sit the whole term, or before the end of the term, shall not have heard and determined all matters ready for its decision, all suits, matters, and things, depending in court, and undecided, shall stand continued to the

Causes undecided, to stand continued.

next succeeding term. If, from any cause, the court shall not sit on any day of the term after it shall have been opened, there shall be no discontinuance; but, so soon as the cause is removed the court shall proceed to business until the end of the term, if the business depending before it be not sooner despatched.

When the chancellor shall think it improper for him to preside, may send the cause to the supreme court.

SEC. 7. When the chancellor shall be interested in any cause depending in the superior court of chancery, or related to either of the parties, or in any manner situated so as to render it improper in his judgment to preside at the trial, it shall be the duty of the chancellor to enter upon the record the cause of such unfitness, and that he is unwilling to preside at the trial; and thereupon such cause shall be removed into the supreme court, and such proceedings may be had therein, as in other suits in chancery; and the said supreme court shall proceed to a decision thereon, and certify the same, to the superior court of chancery of the proper district, to be there entered as the final decree of the court in the cause, and execution may issue thereon as in other cases.

Clerk, how appointed in term time.

Oath.

Bond.

Condition.

How prosecuted.

How appointed in vacation.

SEC. 8. Every appointment to the office of clerk to a superior court of chancery in this state, shall be made by the chancellor, in the following manner: In term time the appointment shall be made, by an order entered of record in the proceedings of the court, and the person so appointed, before he enters on the duties of his office, shall take the oath prescribed in the constitution, in open court, or before the chancellor by whom he is appointed, and shall enter into bond, with two securities to be approved by the court, payable to the governor of the state for the time being, and his successors in office, in the penalty of ten thousand dollars conditioned for the faithful performance of the duties of his office, and that he seasonably record the decrees and orders of said court, and deliver over to his successor in office, all records, minutes, books, papers, presses, and whatever belongs to said office of clerk; which bond shall be recorded in the clerk's office of said court, and immediately thereafter, shall be deposited in the office of secretary of state, by the chancellor, approving the same, and shall not be void on the first recovery, but may be put in suit and prosecuted at the costs and charges of any party injured, until the whole amount of the penalty thereof be recovered: In vacation the appointment shall be by commission, under the hand and seal of the chancellor; and the person so appointed shall execute a bond with security as above prescribed, and produce the same to the chancellor for his approbation: if he approve it he shall endorse his approbation thereon, administer the proper oath of office, and endorse his certificate thereof, also on the bond; and the chancellor shall cause the bond, with the endorsements thereon to be recorded, and shall deposite the same in the office of secretary of state, as aforesaid; which bond may be put in suit, and prosecuted in the like manner, as is before directed in the case of a bond taken in open court. An authenticated copy of any such bond shall be received in evidence in any court of law or equity in this state, in the same manner as the original would be if it were present in court.

Authenticated copy of bond evidence.

Sec. 9. The clerks of said courts shall hold their offices during good behavior, but may be removed therefrom for neglect of duty, or misdemeanor in office, by the supreme court, on motion of which, the clerk against whom complaint is made, shall have twenty days previous notice, specifying the particular negligence or misdemeanor in office, with which he stands charged; and in every such case the said court shall determine both the law and the fact.

Continuance in and removal from office.

Sec. 10. The clerks of the said court shall have power to appoint deputies, with the approbation of the chancellor; and they shall take the oath of office, as above prescribed; and thereupon such deputies shall have full power and authority to do and perform all the several acts and duties enjoined upon their principals. And the clerks of the courts aforesaid shall keep their offices at the court houses of the counties at which such courts shall be holden. But in all cases where offices shall not be provided for the clerks of the said courts, such clerks may keep the records and papers of the said courts at such places as the chancellor shall think fit, and so enter of record.

May appoint deputy.

Where to keep their offices.

Sec. 11. During a vacancy in the office of clerk of a superior court of chancery, and during the unavoidable absence of the principal clerk and his deputies, if any he have, the chancellor, either in term time or in vacation, may appoint a clerk *pro tempore*, who, after taking the necessary oath of office, shall be authorised to perform the duties of a clerk, and during his continuance in office, shall be entitled to all the fees thereof.

A clerk pro tem. maybe appointed.

Sec. 12. Whenever the office of clerk of a superior court of chancery, shall become vacant by any cause whatsoever, the records, papers, books, stationery, and every thing belonging or appertaining to said office, shall be delivered over to the successor in office, by the person or persons having the same, whenever demanded; and it is hereby declared to be the duty of such successor, to demand, receive, and take the same into his care and safe keeping; and in case of refusal, or detention of any such records, papers, books, stationery, or other things appertaining to the office of which he is appointed successor, after demand as aforesaid, he shall moreover give information thereof to the attorney general or district attorney, who shall prosecute such person or persons, by action of debt, or information in the name of the state, in any court of competent jurisdiction; and on conviction thereof by the verdict of a jury, the person or persons so refusing or detaining as aforesaid, shall be fined in the sum of five thousand dollars, to the state, for the use and benefit of the literary fund.

Papers &c. to be delivered to successor:

Penalty for making false or altering the records.

SEC. 13. If any clerk of a superior court of chancery, shall wittingly make any false entry, or raze a letter, or change any record in his keeping, belonging to his office, every such clerk so offending, shall on conviction thereof, be fined and imprisoned, at the discretion of the court, and shall moreover be liable to the action of the party aggrieved.

Process to whom directed.

SEC. 14. All process of every nature and kind, in cases where the said courts shall have jurisdiction, may be directed to the sheriff or other proper officer, of any county in the state, and shall be by him executed and returned to the court from which it emanated. And if there be more than one defendant in any suit, the said suit may be instituted in the district where either of them may reside; and the clerk shall and may issue process against the other defendant or defendants, directed to the counties in which they may be found; and on the return thereof, the like proceedings shall be had as if all the defendants resided within such district.

In case of more than one defendant:

Style and teste of process.

SEC. 15. The style of all process issuing from a superior court of chancery shall be "The State of Mississippi," and shall be tested in the name of the chancellor, and bear teste on the first day of the term next preceding that to which the same may be made returnable; and the clerk issuing the same, shall mark thereon the day on which it shall be issued; and the sheriff or other officer receiving the same shall mark thereon in like manner the day he shall have received it; and every clerk of a superior court of chancery, sheriff or other officer neglecting so to do, shall forfeit and pay the sum of two hundred dollars, to be recovered by action of debt, in any court of record having cognizance thereof, with costs by any person who shall sue for the same. And all original process, and all subsequent process thereupon, to bring any person or persons to answer to any suit, bill or plaint in any superior court of chancery, shall be issued and signed by the clerk of such court, with the seal of office thereto affixed, and shall be returnable on the first day of the term, next succeeding that at which the same shall bear teste, and shall be executed at least fifteen days before the return day thereof; and any writ or process, which shall issue within fifteen days before the commencement of the term of a superior court of chancery, shall be made returnable to the term next after that to be held, within fifteen days as aforesaid, and not otherwise: and all writs and process issued, made returnable, or executed in any other manner, or at any other time than is herein before directed, may be abated upon the plea of the defendant.

Duty of clerk and sheriff.

Execution and returnof original process.

SEC. 16. Whenever the chancellor shall be either complainant or defendant in any suit in a superior court of chancery, or, whenever the office of chancellor shall be vacant, all process in any such suit, shall bear teste in the name of the clerk of the district wherein such suit may be commenced, any thing in this act to the contrary notwithstanding.

Process, when to bear teste in the name of the clerk.

Sec. 17. The chancellor shall have power to order any defendant or defendants in chancery, to be held to bail, on good cause shewn by affidavit of the complainant or otherwise, in such sum as shall appear to be reasonable, on injunctions to stay waste, and all other suits in chancery, where, in the opinion of such chancellor, justice requires that bail should be ordered; and the clerk shall endorse on the writ or other process, the order for such bail, which shall be executed, taken and returned, by the sheriff or other officer of the proper county, in the same manner, and under the same regulations, in all respects, as are provided in a suit or action at common law, wherein bail is required. And the chancellor shall have power in vacation to examine all answers, to bills in chancery; and if any defendant or defendants have been held to bail, he may and he is hereby authorised, on application, to reduce or discharge such bail so taken as aforesaid.

Chancellor may order defendant held to bail.

May reduce or discharge bail in vacation.

Sec. 18. All writs and other process issuing out of any superior court of chancery, where no bail is required, shall be served in the same manner as writs and other process at common law, where no bail is required, are directed, to be served.

Service of process, where no bail is required.

Sec. 19. The chancellor shall have power to arrange the business of said court, in each district, in the most convenient and equitable manner, and also to establish from time to time, as occasion may require, such rules and orders for the orderly conducting of the suits and pleadings, the taking of rules, and entering up decrees, by default or otherwise, and all other matters to be done in vacation: so that the said rules be not repugnant to the constitution and laws of this state, and are necessary and proper to prevent delays in proceedings, and for the advancement of justice.

Chancellor to arrange business of court and establish rules.

Sec. 20. If any of the defendants, whether debtors or others, in any suit instituted in any superior court of chancery, should be absent from the state, the court may nevertheless proceed to a hearing and decree therein, as in the case of absent debtors having effects within this state. And, in suits against such absent defendants, it shall be lawful for the court in which the same may be depending, to direct publication to be made in any newspaper printed within this state, which in the opinion of the court, is best calculated to apprize the absent defendant or defendants, of the pendency of such suit.

Proceedings when defendant is absent.

Sec. 21. The said superior court of chancery shall have general jurisdiction over all persons, and in all causes in chancery within the respective districts, now pending therein, or which may hereafter be brought before it, whether by original process, appeal from any court of probate, *certiorari*, or other legal means, and also in such other cases, as by any statute are or shall be made cognizable therein. But no person shall com-

Court to have general jurisdiction.

mence an original suit in any matter of less value than fifty dollars, on pain of having the same dismissed with costs.

May regulate proceedings in clerks' office.

SEC. 22. The said court in term time, may regulate all proceedings in the clerks' offices, and for good cause shewn, may set aside any dismissions, and reinstate the suits, on such terms as shall appear equitable.

Process issued in vacation on the death of either party.

SEC. 23. Where any person, complainant or defendant, in any suit depending in a superior court of chancery, shall be dead, it shall be lawful for the clerk, during the recess of the court, upon application, to issue process to bring into court the representative of such deceased person: and decrees *nisi*, ta ing bills for confessed, orders of publication against absent defendants, and orders to proceed in the names of the representatives of deceased persons, may be entered at rules in the clerks' office of the respective districts, subject to the control of the court, in the same manner that other proceedings at the rules are subject to such control.

Entries at rules

Chancellor may direct issues to be tried.

SEC. 24. The chancellor, in his discretion may direct an issue or issues, to be tried, whenever it shall be judged necessary, either in the superior court of chancery, or in any other court whatsoever, as justice or convenience to the parties may require; and in all other cases, the mode of trial shall be the same as has been heretofore used and practised in courts of chancery.

Court may appoint commissioners in chancery.

SEC. 25. The said superior court of chancery shall have power, in cases requiring a report, to appoint commissioners in chancery, and to cause a reasonable allowance to be taxed therefor, in the bill of costs; and the same shall be collected and paid in the manner prescribed by law.

Chancellor may direct account to be taken in vacation.

SEC. 26. The chancellor may direct an account to be taken, in any cause depending in a superior court of chancery, in vacation, whenever such account would be directed if the court were in session. And whenever a commissioner engaged in taking an account in vacation, shall doubt as to the principles on which the account should be taken, or shall doubt of the porpriety of admitting any item of debit or credit, contended for by a party, a commissioner may state in writing, the points on which he shall doubt, and submit the same to the chancellor, in vacation, who may thereupon decide the question or questions, so submitted to him, and the commissioner shall govern himself accordingly; but, on such points submitted, the chancellor shall hear no arguments of counsel, except by consent of parties.

Com'rs may administer oath.

SEC. 27. Commissioners in chancery shall be, and they are hereby empowered to administer an oath or affirmation, in all cases to them referred by a superior court of chancery, or by the chancellor in vacation, wherein it shall be necessary to examine witnesses on oath or affirmation; and if any person sworn or affirmed by any of the said commissioners, by virtue of this act shall give any evidence, under such circumstances as would have constituted the same to be perjury if given in the presence of a court of record, the same shall be deemed perjury to all intents and purposes.

To issue subpœnas for witnesses.

Liability of defaulting witnesses.

Sec. 28. Commissioners in chancery shall and may issue *subpœnas* for witnesses to attend before them, to be executed and returned in like manner as *subpœnas* issued by the clerks of the circuit courts of law: and, if a *subpœna* be issued by a commissioner in chancery, and served upon the witness or witnesses, named therein, and he, she or they shall fail to attend, according to the requisition of such *subpœna*, such commissioner shall report such default; and thereupon such proceedings shall be had before the court, to which such report shall be made, as would be had if such witness or witnesses had been summoned to any circuit court to give evidence on a trial therein depending, and had made default. And moreover such witness or witnesses shall be liable to such action for damages, at the suit of the party aggrieved, as he, she or they would have been liable to for a default, in any circuit court in this state.

Fees for copies of reports, &c.

To be charged in the bill of costs.

Sec. 29. The commissioners in chancery shall be authorised to charge for copies of reports, or such other papers as the parties in the suits referred to them may require, the same fees as the clerk of the superior court of chancery, whence they receive their appointment, is authorised to charge by law for similar services; which shall be collected and accounted for, in the same manner as the fees of the said clerk: *Provided*, Such charges shall be confined to the services, for which no allowance shall be made by the rules of the superior court of chancery establishing the fees of such commissioners. And such fees being certified to the clerk of the proper district, shall be charged in the bill of costs, if the same would have been so chargeable in case the same services had been performed by such clerk. And every commissioner, for asking, demanding or receiving any other or further fees for services performed, than those allowed by law, or for asking, demanding or receiving any fees for services not performed, shall be liable to the same penalties and proceedings, as clerks of the circuit courts are liable to, in like cases.

Matters of law sent to the supreme court.

Sec. 30. It shall be lawful for the chancellor to send any matter of law, to the supreme court, for their opinion, to be certified thereupon.

Chancellor may empower persons to take depositions.

Sec. 31. The chancellor may authorise and empower two or more persons in each county within this state, to take the depositions of witnesses, in any cause or causes depending in a superior court of chancery; the clerk whereof shall issue the proper commissions to the person so appointed, who shall for such service or services be allowed by the chancellor, a reasonable compensation, to be taxed in the bill of costs and collected, and accounted for, in the same manner as the fees of the said clerk.

Com'rs may administer oath.

SEC. 32. The said commissioners are hereby empowered to administer an oath or affirmation in all such cases wherein it shall be necessary to examine and take the depositions of witnesses, on oath or affirmation; and if any person sworn or affirmed by any of the said commissioners, by virtue of this act, shall give any evidence, under such circumstances, as would have constituted the same to be perjury if given in the presence of a court of record, the same shall be deemed perjury, to all intents and purposes; and the said commissioners shall and may issue *subpœnas* for witnesses to attend before them, to be executed and returned in like manner as *subpœnas* issued by the clerks of the circuit courts of law; and if a *subpœna* be issued by commissioners, under the authority of this act, and served upon the witness or witnesses named therein, and he, she or they shall fail to attend according to the requisition of such *subpœna*, such commissioner shall report such default; and thereupon such proceedings shall be had before the court, to which such report shall be made, as would be had if such witness or witnesses, had been summoned to a circuit court of law, to give evidence on a trial therein depending, and had made default: and moreover such witness or witnesses, shall be liable to such action for damages, at the suit of the party aggrieved, as he, she or they would have been liable to, for a default in court as aforesaid: *Provided*, That no witness shall be compelled by any *subpœna* from such commissioner, to go out of the county in which he resides.

To issue subpœnas for witnesses.

To report default.

Proceedings thereon.

Court may direct sale for cash or on credit

SEC. 33. The superior court of chancery, in all cases where a sale of property is decreed, may direct the same to be made for cash, or on such credit, and on such terms as may be deemed best; and whenever in any suit in equity, it shall be proper to decree the execution of any deed or other writing, it shall be lawful for the court to appoint a commissioner or commissioners to execute the same; and the execution thereof by such commissioner or commissioners, shall be as valid in law to pass, release or extinguish the right, title and interest of the party on whose behalf it is executed, as if it had been executed by such party in proper person, and as if such party had been at the time capable in law of executing the same: *Provided, however*, That nothing herein contained, shall be construed to alter, abridge or in any manner affect the right of infants or absent defendants, or of any other person or persons, to shew cause against any such decree, or to contest or reverse the same, within the same time, and in the same manner as if this act had never passed.

May appoint commissioners to execute deed

Appeals on final orders or decrees.

SEC. 34. Whensoever any person or persons, body politic or corporate, being complainant or defendant, shall think himself, herself or themselves aggrieved by the decree or final order of a superior court of chancery, in any suit or controversy whatsoever, where the debt or any thing claimed or recovered, exclusive of costs, shall be of the value of two hundred dollars, or where land, slaves or other specific property, of the value aforesaid, shall be the subject of the suit, decree or final order, such person or persons, body politic or corporate, may enter an appeal to the supreme court, from such decree or final order; and before granting any such appeal, the party praying the same, his or their agent or attorney, shall enter into bond with sufficient security, to be approved by the chancellor, in a reasonable penalty, with condition, to pay, satisfy and perform the decree or final order of the superior court of chancery, and all costs, in case the same be affirmed.

Before appeal party shall enter into bond

Appeals may be entered within one month after decree.

SEC. 35. Any party thinking himself aggrieved by a decree of a superior court of chancery, and not having entered an appeal from the decree, at the time it was pronounced, may appeal from such decree, at any time within one month after decree pronounced; loding for that purpose with the clerk of the supreme court, a copy of the proceedings in the suit, and a petition suggesting error in the decree, signed by the party or some counsel attending the supreme court; and also lodging with the petition a bond, executed by the appellant or his agent, with good and sufficient security, to be approved by one of the judges of the supreme court, with the like condition, as is annexed to other appeal bonds in chancery; and the clerk of the supreme court shall thereupon issue a summons against the appellee, requiring him to appear and answer the said appeal, and shall also issue a *supersedeas* if necessary, to enjoin from proceeding in the execution of the decree; and the court shall and may hear and determine the appeal, in the same manner, as if the appeal had been entered at the time the decree was pronounced.

Petitions for appeals may be allowed within three years.

SEC. 36. The supreme court, or any judge thereof, in vacation, shall have power for good cause shown, to allow a petition of appeal, and if necessary, order a *supersedeas*, to stop the execution of any decree pronounced by a superior court of chancery, at any time within three years after pronouncing the same; the party praying such appeal and *supersedeas*, complying with the terms, which the said court, or the judge thereof shall annex to such order.

Appeals on interlocutory orders or decrees.

SEC. 37. In any cause depending in a superior court of chancery, wherein any interlocutory order or decree, shall be made, it shall be lawful for such court, or the chancellor in vacation, at any time before a final decree in the cause, to grant an appeal to the supreme court, from such interlocutory order or decree, in the same manner, and upon the same conditions, as if a final decree had been made: *Provided*, That, by such interlocutory order or decree, money is required to be paid, or the possession or title of property to be changed, or that the court or the chan-

Proviso.

cellor shall think such appeal proper, in order to settle the principles of the cause, or to avoid expense and delay; and if the superior court of chancery, or the chancellor in vacation, shall refuse an appeal from any such interlocutory order or decree, it shall be lawful for the supreme court, or any judge thereof, in vacation, upon petition, to grant an appeal from such interlocutory order or decree, for any error therein, and to award the proper process thereupon in the manner and upon the conditions prescribed by law, for granting appeals from final decrees.

Interest, where money is decreed to be paid.

SEC. 38. The superior court of chancery, or supreme court having jurisdiction, shall have power and authority in all cases, where by any final decree, any sum or sums of money, are directed to be paid to either party, to award interest until the same shall be paid; any law or custom to the contrary notwithstanding.

Damages awarded to appellee

SEC. 39. The supreme court, in all cases where any decree rendered for any sum of money by a superior court of chancery, and on an appeal therefrom the same be affirmed, shall award to the appellee damages, at the rate of ten per centum per annum, on the whole amount, (including the costs,) for which such decree was rendered from the time the appeal was obtained, until the affirmance in the supreme court in satisfaction of all damages or interest; and legal interest from that time until the same shall be paid.

Release of errors to be filed before injunction granted to stay execution.

Damages, when injunction is dissolved.

Bill to be dismissed when injunction is dissolved.

SEC. 40. No injunction shall be granted to stay an execution of a judgment at law, unless the party applying for such injunction, or to be benefited thereby, shall first sign and seal a release of errors in such judgment at law, and file the same in the office of the clerk of the court in which such judgment shall have been obtained; and whenever an injunction shall be dissolved, damages after the rate of six per centum shall be added to the amount of the judgment: *Provided*, The court be of opinion that the injunction was obtained for delay. And in all cases where any injunction shall be wholly dissolved, the bill of the complainant shall stand dismissed of course, with costs, unless sufficient cause is shewn against its dismission at the next succeeding term of the court. And it shall be the duty of the clerk of such court to enter such dismission on the last day of the term aforesaid.

Damages to which party paid.

SEC. 41. Where any injunctions shall be obtained to stay the proceedings on any judgment at law, rendered in any of the courts of this state for money, and such injunction shall be dissolved wholly or in part, damages as aforesaid from the time the injunction was awarded, until the dissolution, shall be paid to the party on whose behalf the judgment was obtained, on such sum as appears to be due, including the costs. And the clerk of the superior court of chancery, wherein such injunction shall be depending, shall on the dissolution thereof, certify

Clerk to certify order of dissolution.

to the clerk of the court wherein the judgment was obtained, the order of dissolution, as also the time of granting and dissolving the injunction, and the clerk shall issue the execution, according to the provisions of this act: *Provided, nevertheless,* That where the injunction is granted to obtain a discovery, or any part of the judgment shall remain enjoined, the court wherein the injunction shall be depending, may if it appear just, direct that no such damages shall be paid by the complainant, or such proportion as according to equity, the court may deem expedient; and the clerk of the court where the judgment was rendered, or the court by whom execution shall be awarded, shall govern themselves accordingly.

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Writs of *ne exeat* how granted, and proceedings thereon.

SEC. 42. Writs of *ne exeat,* shall not be granted, but upon a bill filed and affidavit made to the truth of its allegations, which being produced to the court in term time, or to the chancellor in vacation, such writ may be granted or refused as shall seem just; and if granted he shall direct to be endorsed thereon, in what penalty bond and security shall be required of the defendant; and if the defendant shall by answer satisfy the court that there is no reason for his restraint, or give sufficient security to perform the decree, the writ may be discharged; or it may be discharged in like manner by the chancellor in vacation: *Provided,* Reasonable notice be given to the adverse party, of the time and place of making the motion.

Injunctions to stay proceedings, how granted.

SEC. 43. No injunction shall be granted to stay proceedings in any suit at law, unless the matter in dispute be of value sufficient to admit of original jurisdiction in the superior court of chancery; nor unless the court in term time, or the chancellor in vacation, shall be satisfied of the complainant's equity, either by affidavit certified at the foot of the bill, that the allegations thereof are true, or by other means, and shall order the same.

Endorsement on subpœna when injunction is granted.

SEC. 44. Where any injunction shall be granted, the clerk of the superior court of chancery, shall endorse on the subpœna, that the effect thereof is to be suspended, until the party obtaining the same, shall give bond with sufficient security, in the office of the court in which the judgment to be enjoined shall have been obtained. And the party obtaining the injunction, shall then enter into bond with sufficient security, to be approved by the chancellor, or judge granting the injunction, and file the same in the clerk's office of the court in which the proceedings at law were had, conditioned for paying all money and costs due, or to become due, to the plaintiff in the action at law, and also all such costs and damages, as shall be awarded against him or her, in case the injunction shall be dissolved; and the clerk of such court shall endorse on the subpœna and injunction that the bond is filed.

Party to enter into bond.

Court to appoint guardian *ad litem.*

SEC. 45. The court before whom any suit in equity is depending, shall have power to appoint any person they may think fit, to be guardian *ad litem* to any infant, or insane defendant in such suit, whether such infant or insane defendant shall have been served with process or not, and to compel the person so appointed to act: *Provided, however,* That such guardian *ad litem* shall not be liable to the payment of costs, and that he shall have his reasonable charges allowed him by the court, to be paid by the party at whose motion he was appointed, and to be taxed in the bill of costs.

Appeals from a court of probate to be dismissed on failure to file record.

SEC. 46. If either party shall enter an appeal from any sentence, judgment or decree pronounced in any court of probate, in this state, to the superior court of chancery and shall fail to file the record with the clerk of such superior court of chancery before or during the fourth day of the term of such court, next after the same shall have been granted, such appeal shall be dismissed with costs, unless good cause be shewn to the contrary, in which case the same may be docketted, and heard, as if the record had been filed in proper time.

Clerk to keep process book.

SEC. 47. The clerk of the superior court of chancery, of each district, shall keep a process book, in which he shall regularly note all process issued by him, whether final or mesne, and all orders and decrees which he shall issue, together with the dates thereof, the time of issuing the same from the office, and the person to whom delivered, or to whom transmitted. In this book he shall take a receipt for all process, orders and decrees, delivered to the sheriff or other officer. And all process, orders, and decrees not so delivered, unless when it shall be otherwise directed by the party or his attorney, shall be sent by the clerk, to the sheriff or other proper officer, of the county within which they are to be executed. They shall be transmitted by the mail, postage paid, and the date of the transmission shall be noted in the process book; and the clerk shall keep a regular account of the monies so paid by him for postage, which he may render to the court, from time to time, at intervals not exceeding eighteen months; and such accounts when distinctly made out, and verified by the oath or affirmation of the clerk, if deemed correct by the court, shall be allowed, and ordered to be paid by the parties chargeable therewith. The entry of an order to this effect, in open court, shall be deemed notice to all concerned; and if any person shall fail to pay the sum, with which such person stands charged, within sixty days, an execution may be issued for the same, as in case of a judgment, with interest at the rate of ten per centum per annum.

Transmission of process to the sheriff of the proper county.

Postage.

Court may punish for contempt (*See Chap. 13 sec. 177)

SEC. 48. The superior court of chancery, shall have power to punish any person, who may be guilty of a contempt of such court, in like manner as if such contempt had been committed against a circuit court of law.

Jail and keeper thereof.

SEC. 49. In all cases the jail of the county in which a superior court of chancery shall sit, shall be used as the jail of such court;

and the keeper of the jail of such county, shall act as jailor for the said superior court of chancery, and shall attend it during its sessions, be amenable to its authority, and obedient to its lawful orders. He shall take into his custody all person committed by the order of the said court, or by any process issuing from such court.

Sheriff's duty.

Sec. 50. The sheriff of the county in which a superior court of chancery shall sit, shall execute all orders and decrees rendered by such court; provided such orders and decrees are by law to be executed in the said county; and shall in all respects, act as sheriff of the said court. And it shall be the duty of the sheriff of each county within this state, to execute and duly to return all process, orders and decrees, which shall be directed to him from any superior court of chancery, in the same manner and under the like penalties, as are prescribed in the case of process, judgments, or decrees of a circuit court of law; and also to execute all notices relating to suits in chancery, all decrees for the sale of property within his county, made by a superior court of chancery, unless the court shall appoint special commissioners for that purpose.

Sheriff to summons constables

Sec. 51. It shall be the duty of the sheriff of the county in which a superior court of chancery shall sit, to summon two constables to attend such court, who shall attend accordingly, or pay a fine, at the discretion of the court, not exceeding ten dollars.

Allowance for supplying clerk's office.

Sec. 52. The superior courts of chancery shall make allowances to the clerks thereof, of all needful sums for supplying the offices with necessary books, and presses for the records, and for the safe keeping of the books and papers belonging to their offices, respectively, on which allowance being certified to the auditor of public accounts, he shall issue his warrant on the treasury of the state, for the amount of the same, to be paid out of any moneys in the treasury not otherwise appropriated.

Clerks empowered to administer oaths in certain cases.

Sec. 53. The clerks of the superior court of chancery, and their deputies, shall be, and they are hereby empowered to administer oaths in all cases wherein an affidavit is necessary as the foundation of any official act to be performed by any such clerk; which affidavit shall be filed, and shall in every respect be as effectual as if the oath thereto had been administered by a justice of the peace. And if any person sworn by any such clerk or his deputy, by virtue of this act, shall give any evidence under such circumstances as would have constituted the same to be perjury, if done in presence of a court of record, the same shall be deemed perjury to all intents and purposes.

Proceedings to be drawn up and read in open court.

Sec. 54. For preventing errors in entering up the decrees and orders of said courts, the proceedings of each day shall be drawn up at large by the clerk, and read in open court the next day (except those of the last day of each term; which shall be drawn up, read and corrected, the same day,) and any necessary corrections made therein; when they shall be signed by the chancellor, and preserved among the records. And for the more entire and better preservation of the records of the court, the clerk shall within three months after any suit shall he finally determined, enter all the pleadings therein, and other matters relating thereto together, in a book to be kept for that purpose, so that an entire and perfect record be made thereof; and those wherein the titles to lands is determined, shall be entered in separate books to be kept for that purpose only; and every clerk of a superior court of chancery, who shall fail or neglect to perform the duty herein required, shall be liable to the penalties prescribed in the case of a clerk of a circuit court, for failing to make up a full and complete record of a judgment rendered in a suit or action at common-law.

Clerks shall enter pleadings, &c. in a book.

Penalty on failure.

When clerk may issue commissions for taking depositions.

Sec. 55. After any bill filed, and before the defendant hath answered, upon oath made that any of the complainant's witnesses are aged and infirm, or going out of the state, the clerk may issue a commission for taking the examination of such witnesses *de bene esse;* the party praying such commission, giving reasonable notice to the adverse party, of the time and place of taking the depositions.

Time allowed after replication for taking depositions.

Sec. 56. Whenever a general commission shall issue for taking depositions upon answer and replication, six months from the time of the replication, shall be allowed the parties for taking their depositions; and either party, at the expiration of the said six months, may set the same for hearing; nor shall any deposition taken after that time, be read as evidence on the hearing, except the same was taken by consent of the parties, by special order of court, or out of the state

Deposition of witness residing out of the state how taken

Sec. 57. If any party to a suit depending in equity, shall desire to take the deposition of any witness residing out of the state, it shall be lawful for the clerk of the court in which such suit shall be depending, upon application of the party, to issue a commission, to any judge, justice of the peace, or notary public, in the state, territory or dominion, in which the witness may reside, to take such deposition on interrogatories: *Provided*, That the party applying for such commission, shall file his interrogatories in the clerk's office, and serve the opposite party, his agent, or attorney, with a copy thereof, with notice of the day on which such commission will issue, at least ten days before the same shall issue; in which time the opposite party may file his cross-interrogatories; and a certified copy of such interrogatories and cross-interrogatories, if any there be, shall accompany such commission; and if any deposition taken as aforesaid, shall contain any testimony, but the answers to such interrogatories, the same shall be deemed surplusage, and shall not be read in evidence. And any question put to the witness or witnesses, in such inter-

Proviso.

rogatories, and the answer thereto, shall be subject to all legal objections, on the trial of the cause, in which any deposition is taken as aforesaid, and may be admitted or rejected by the court, as in other cases; and all depositions taken as aforesaid, shall be sworn or affirmed to, certified, authenticated and returned, in the same manner, in all respects, as is provided in the case of like deposition taken in a circuit court of law.

Questions and answers subject to legal objections.

Deposition sworn to.

SEC. 58. If any defendant or defendants shall be in custody upon any process of contempt, and be brought into court by virtue of a writ of *habeas corpus* or other process, and shall refuse or neglect to enter his or her appearance, according to the rules of the court, or appoint an attorney of the court to do the same for him, the court in such case may direct an attorney to enter an appearance for the defendant or defendants, and thereupon such proceedings may be had, as if he or they had actually entered an appearance, but if such defendant or defendants shall be in custody, at the time a decree shall be made, upon refusal or neglect to enter an appearance, or to appoint an attorney as aforesaid, or shall be forthcoming so as to be served with a copy of the decree, then such defendant or defendants shall be served with a copy of the decree, before any process shall be taken out to compel the performance thereof; and if such defendant or defendants shall die in custody before such service, then his heir, if any real estate be sequestered or affected by such decree, or if only personal estate, his executor or admistrator shall be served with a copy, in a reasonable time after such death shall be known to the complainant and who is such heir, executor or administrator.

Defendant refusing to enter appearance, the court may direct the same to be done.

When necessary for defendant to be served with copy of decree.

In case of his death.

SEC. 59 And whereas, upon bills of review in the superior court of chancery, the chancellor may think it reasonable during the pendency of such bills, or until cause shall be shewn to the contrary, to stay proceedings on the decrees, which such bills are intended to review: *Be it therefore enacted*, That in such case the chancellor, either in term time, or vacation, when a bill praying a review of the proceedings, in which a decree shall have been pronounced by the said court, shall be presented to him, may upon such bill, and the circumstances of the case, as the same shall appear satisfactory to him, direct the proceedings on such decree to be stayed, until a decree on the said bill of review shall be made, or until the further order of the chancellor; or he may refuse to grant a stay of proceedings in that case as to him shall seem right: *Provided*, That the chancellor shall, in either of the said cases direct such security to be given, and in such place as is usual in the cases of appeal and injunction, or such other security as to him shall seem to be reasonable.

Preamble.

Chancellor may direct proceedings to be stayed.

Or refuse to do the same.

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SEC. 60. After a final decree in any suit depending in any superior court of chancery, for lands, slaves, money, or things of a specific nature, if no commissioner or commissioners be ap-

At request either party clerk to issue final process.

pointed to carry such decree into effect, the clerk of such court shall, at the request of the party in whose favor such decree shall have been rendered, issue any writ of *fieri facias*, *capias ad satisfaciendum*, *habere facias possessionem*, or other final process, according to the nature of the case, directed to the sheriff or other officer of the proper county; which writ so issued, shall be executed and returned by the sheriff or other officer to whom the same shall be directed, and shall have the same operation, and possess the same force to all intents and purposes, as similar writs, issued upon a judgment at common law; and the sheriff or other officer to whom the same is directed, shall be subject to the like penalties and recoveries, for misconduct or neglect, and the court shall exercise the same powers as if the said writ had issued upon a judgment at common law.

To be executed and returned by sheriff.

For neglect, &c sheriff subject to penalty.

Proof in proceedings against sheriff

SEC. 61. In any proceedings against a sheriff or other officer, for failing to return any process, order, or decree, proof that such process, order, or decree, was put into the post-office, duly addressed to him, and that the postage thereon was paid, shall be sufficient evidence of the receipt thereof by such officer, unless he will make oath or affirmation that he did not himself receive it, and that he verily believes it was not received by any of his deputies.

Costs.

SEC. 62. The superior court of chancery shall have power on the final determination of any suit in equity, to decree that either party shall pay the costs in such suit, or that the same be divided, as may appear to be equitable and just.

Fees of clerk and sheriff.

SEC. 63. The clerk of a superior court of chancery shall be entitled for his services, to the fees heretofore established, or which may hereafter be established, for all process and other proceedings in a court of chancery; and for executing the process, orders, and decrees, of said court, the sheriff of the several counties to whom the same may be directed, shall be entitled to the fees allowed by law for executing the like process of a circuit court of law.

Executive to have seal provided.

SEC. 64. The executive of the state shall cause to be provided a seal for the use of the superior court of chancery, for each district, with the style of the court around the margin, and an eagle in the centre; and the sum necessary to procure such seals shall be paid, on the order of the executive, out of any money in the treasury, not otherwise appropriated.

Repealing clause.

SEC. 65. All acts and parts of acts coming within the purview and meaning of this act, shall be, and the same are hereby repealed.

CHAPTER 13.

An act, to reduce into one, the several acts and parts of acts, concerning the establishbment, jurisdiction and powers of the superior courts of law.

Passed June 28, 1822.

SEC. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi, in general assembly convened,* That the state shall be divided into four circuits, and one judge of the supreme court shall be assigned to each circuit, who shall, after his appointment, reside in some one of the counties of which his circuit is composed, and shall hold a court, in each year, at the court house of the several counties within his circuit, or at such other place, in such counties, as may be designated for holding courts, at the times and the manner herein after directed.

State divided into 4 circuits.

SEC. 2. The counties of Hinds, Warren, Claiborne and Jefferson, shall constitute the first circuit; the counties of Franklin, Adams, Lawrence and Covington, shall constitute the second circuit; the counties of Amite, Pike, Marion, Wilkinson and Hancock, shall constitute the third circuit; the counties of Jackson, Wayne, Monroe, Green and Perry, shall constitute the fourth circuit; and the court to be held in said counties respectively under this act, shall be styled "The Circuit Court of the county of ———."

What to compose each circuit.

SEC. 3. A circuit court shall be held, in each county in this state, twice in each year, and shall commence on the days, and may continue for the term herein specified, that is to say: In the county of Hinds, on the first Mondays of March and September, and may continue six days and no longer; in the county of Warren, on the second Mondays of March and September, and may continue six days and no longer; in the county of Claiborne, on the third Mondays of March and September, and may continue six days and no longer; in the connty of Jefferson, on the fourth Mondays of March and September, and may continue six days and no longer; in the county of Franklin, on the second Mondays of April and October, and may continue six days and no longer; in the county of Adams, on the third Mondays of May and November, and may continue eighteen days and no longer; in the county of Wilkinson, on the first Mondays of May and November, and may continue twelve days and no longer; in the county of Amite,* on the fourth Mondays of March and September, and may continue twelve days and no longer; in the county of Pike, on the third Mondays of March and September, and may continue six days and no longer; in the county of Lawrence, on the fourth Mondays of March and September, and may continue twelve days and no longer; in the county of Marion, on the second Mondays of March and September, and may continue six days and no longer;

Time of holding courts in each county.

(*Time changed in Amite, Pike, Marion and Hancock. see chap. 14.)

in the county of Covington, on the third Mondays of March and September, and may continue six days and no longer; in the county of Green, on the first Mondays of April and October, and may continue six days and no longer; in the county of Perry, on the second Mondays of April and October, and may continue six days and no longer; in the county of Hancock, on the first Mondays of March and September, and may continue six days and no longer; in the county of Jackson, on the fourth Mondays of March and September, and may continue six days and no longer; in the county of Wayne, on the third Mondays of April and October, and may continue six days and no longer; and in the county of Monroe, on the first Mondays of May and November, and may continue six days and no longer: and in the absence of the judge of any of the said courts, the sheriff of the county may adjourn the same, from day to day, for the space of four days.

In the absence of judge sheriff may adjourn.

Judges of the supreme court to be judges of circuit court.

Sec. 4. The judges of the supreme and superior courts, heretofore appointed, shall, during their continuance in office, be deemed and taken as judges of the supreme court, and vested with the powers and jurisdiction of judges of the circuit courts, established by this act, and the number of judges of said court, shall always equal the number of circuits into which the state is, or may be divided; and each judge of the supreme court hereafter appointed, shall take the oath prescribed in the constitution* as such, and also as a judge of the circuit courts; which oath may be taken before the executive, any judge, justice of the county court or justice of the peace, of the state; and a certificate thereof, being obtained, shall enable him to do all the duties of his office, and to act as a general conservator of the peace, throughout the state. Such certificate shall be recorded in the supreme court, or the circuit court, where such judge shall first sit. Any judge, who shall sit as a judge of the supreme or circuit court, without having taken the oath herein required to be taken by him, shall be deemed guilty of a high misdemeanor, and may for the same, be removed from office.

Oath.

(*See Chap. 55 sec. 3)

Undecided business to stand continued.

Sec. 5. If from any cause a circuit court shall not be held at any term thereof, or shall not continue to sit the whole term, or before the end of the term shall not have heard and determined all matters ready for their decision, then all process, pleadings and proceedings, of what nature soever, remaining in said court, pending and undecided, shall stand continued of course, until the next succeeding term; and if from any cause, the court shall not sit on any day in a term, after it shall have commenced, there shall be no discontinuance, but the court may proceed to business on any subsequent day until the end of the term, if the business before said court, be not sooner finished.

Special circuit court may be ordered by the supreme court.

Sec. 6. Whenever the business depending in the circuit court of any county in this state, shall not be heard and determined at any stated term of said court, it shall be the duty of the judge assigned to such circuit, to report the same to the next supreme court, and the said supreme court shall, whenever they may deem it expedient, order a special circuit court to be holden in any county, for the purpose of hearing and determining all such causes, matters and things whatsoever, either civil or criminal, as may be ready for trial in said circuit court; and the clerk of the supreme court shall forthwith send to the clerk of the circuit court of the said county, a certified copy of the said order, and, shall cause the same to be published in such newspaper or newspapers of the state, as the said supreme court may direct. And it shall be the duty of one of the judges of the supreme court to hold the said special court.

Copy of the order to be sent to the clerk of the circuit court.

Sec. 7. Whenever any clerk of the circuit court of any county shall receive such order, it shall be his duty forthwith, to issue and deliver to the sheriff of the same county, a writ of *venire facias* for the number of jurors directed by law to be drawn at a stated term of the circuit court of said county, returnable to the said special court; and it shall be the duty of the sheriff of the said county to execute the said writ; and the jurors thereby summoned, shall be liable to the same penalties for non-attendance at the said special court, as for like default at a stated term of the circuit court.

Clerk, on the receipt of the order, to issue *venire facias*.

Sec. 8. All causes which may be depending, continued, or have day in any circuit court of any county, wherein a special circuit court shall or may be ordered, shall be continued to, and have day in the said special court; and the parties thereto shall be required to attend and prosecute or defend the same in the same manner as they would be required to attend and prosecute or defend the same, at the court to which the said causes were originally returnable; and all witnesses who may be duly summoned or bound in recognizance to attend at any of the above mentioned courts, shall be liable on their failure so to do, to the same penalties as for non-attendance at any of the stated terms of said courts.

Causes depending shall have day in the special court.

Parties and witnesses required to attend.

Sec. 9. The clerks of the several superior courts now existing in this state, shall be clerks of the circuit courts established by this act in their respective counties, subject to the same duties, and liable to the same penalties, as clerks of the circuit courts who may be hereafter appointed.

Clerks of superior courts now existing, to be clerks of the circuit courts.

Sec. 10. Every vacancy in the office of clerk of a circuit court of law in this state, shall be filled by appointment of the judge permanently assigned to the circuit in which the vacancy may happen, in the following manner: in term time the appointment shall be by an order entered of record in the proceedings of the court, and the person, so appointed before he enters on the duties of his office, shall take the oath prescribed in the constitution, in open court, or before the judge by whom he is appointed, and shall enter into bond, with two securities to be approved by

Vacancies in the office of clerk how filled in term time.

Oath and bond.

the court of which he is clerk, payable to the governor of the state, for the time being, and his successors in office, in the penalty of five thousand dollars, conditioned for the faithful performance of the duties of his office, and that he seasonably record the judgments, decrees and orders of said court, and deliver over to his successor in office, all records, minutes, books, papers, presses, and whatever belongs to said office of clerk; which bond shall be recorded in the clerk's office of said court, and immediately thereafter shall be deposited in the office of secretary of state by the judge approving the same, and shall not be void on the first recovery, but may be put in suit and prosecuted at the costs and charges of any party injured, until the whole amount of the penalty thereof be recovered: In vacation the appointment shall be by commission under the hand and seal of the judge making the same, and the person so appointed, shall execute bond with security as above prescribed, and produce the same to the judge for his approbation: if he approve it, he shall endorse his approbation thereon, administer the proper oath of office, and endorse his certificate thereof also on the bond; and the said judge shall cause the bond with the endorsements thereon to be recorded, and shall deposite the same in the office of secretary of state, as aforsaid: which bond may be put in suit and prosecuted in the like manner, as is before directed in the case of a bond taken in open court. An authenticated copy of any such bond shall be received in evidence in any court of law or equity of this state, in the same manner as the original would be if it were present in court.

In vacation.

Authenticated copy of bond received in evidence.

Time of continuance in office and manner of removal from office.

SEC. 11. The clerks of said courts shall hold their offices during good behavior, but may be removed therefrom for neglect of duty or misdemeanor in office, by the supreme court, on motion; of which the clerk against whom complaint is made, shall have twenty days previous notice, specifying the particular negligence or misdemeanor in office with which he stands charged; and in every such case the said court shall determine both the law and the fact.

Clerks may appoint deputies.

SEC. 12. The clerks of the said courts shall have power to appoint deputies, with the approbation of their several courts, who shall take the oath of office; and thereupon such deputies shall have full power and authority to do and perform all the several acts and duties enjoined upon their principals. And the clerks of the courts aforesaid, shall keep their offices at the court houses of the counties in which they are or may be clerks. But, in all cases where offices have not been provided for the clerks of the said courts, such clerks may keep the records and papers of the said courts at such places, as the judges thereof shall think fit, and so enter of record.

Offices where to be kept.

Clerks *pro tem.*

SEC. 13. During the vacancy of the office of clerk, in any circuit court of law, and during the unavoidable absence of the principal clerk and his deputies, if any he have, the judge thereof, either in term time, or in vacation, may appoint a clerk *pro tempore*, who after taking the necessary oath of office, shall be authorised to perform the duties of a clerk and during his continuance in office, shall be entitled to all the fees thereof.

Papers &c. to be delivered to the successor.

SEC. 14. Whenever the office of clerk to any court, shall become vacant by any cause whatsoever, the records, papers, books, stationery, and every thing belonging or appertaining to said office, shall be delivered over to the successor in office, by the person or persons having the same, whenever demanded, and it is hereby declared to be the duty of such successor, to demand, receive, and take into his care and safe-keeping all such records, papers, books, stationery, and other things appertaining to the office of which he is appointed successor; and in case of refusal, or detention of the same, or any part thereof after demand as aforesaid, he shall, moreover, give information thereof to the attorney-general or district attorney, who shall prosecute such person or persons, by action of debt, or information, in the name of the state, in any court of competent jurisdiction, and on conviction thereof by the verdict of a jury, the person or persons so refusing or detaining as aforesaid, shall be fined in the sum of five thousand dollars to the state, for the use and benefit of the literary fund.

Proceedings in case of detention.

Penalty for making false entry or changing record.

SEC. 15. If any clerk shall wittingly make any false entry, or raze a letter, or change any record in his keeping, belonging to his office, every such clerk so offending, shall on conviction thereof, be fined and imprisoned at the discretion of the court, and shall moreover be liable to the action of the party aggrieved.

Jurisdiction of the court.

SEC. 16. The circuit courts of law in the several counties of this state, shall have original jurisdiction of all suits and actions for the recovery of money, founded on any bond, bill, promissory note, or other written contract, covenant or agreement whatsoever, or on any open account where the matter in controversy shall be of the value of *fifty* dollars or upwards, and of all other civil suits and actions, real, personal and mixed, and all causes, matters and things arising under the constitution and laws of this state, not expressly cognizable in some other court, established by law; and shall have power to hear and determine all prosecutions in the name of the state, by indictment, information, or presentment, for treasons, murders, and all other felonies, crimes and misdemeanors, committed within their respective jurisdictions, except such as may be exclusively cognizable before a justice of the peace, or in some other court of this state, or of the United States; and shall, moreover, have and exercise all the powers incident or belonging to a court of oyer and terminer, and general jail delivery, and generally to do and perform all other acts lawfully pertaining to a circuit court of law of this state: And the judges of said courts, and each of them, either in vacation or term time, shall have authority to grant writs of *habeas corpus*, *mandamus*, *certiorari*, writs of

Judges may grant remedial writs.

error, and *supersedeas*, and all other remedial writs, returnable according to law, into the supreme court or either of the said circuit courts.

Offences committed in Indian nation, where cognizable.

SEC. 17. All offences against the laws of this state, committed within the limits of the same, on lands to which the Indian title has not been extinguished, shall be cognizable in the circuit court of the county to which the defendant may be brought or in which he may be found.

Suits for a less sum than the court can take cognizance of &c. how disposed of.

SEC. 18. If any suit shall be commenced in any circuit court for a less sum than such court can legally take cognizance of, or if any person shall demand a greater sum than is due, on purpose to evade this act, in either case the plaintiff shall be nonsuited and pay costs: *Provided always*, That if the plaintiff, or any other person for him, will make an affidavit, (to be filed in the clerk's office) that the sum for which the suit be brought, is really due, but that for want of proof, or that the time limited for the recovery of any particular article, bars a recovery; then, and in that case, such plaintiff shall have a verdict and judgment for what appears to be legally proved, any thing herein to the contrary notwithstanding: *And provided, also*, That nothing herein contained shall extend or be construed to extend to suits on bonds, penal bills, or any other action of debt, grounded on a penalty where the balance due on such bond or penal bill, or other action of debt as aforesaid, is of less value than the sum herein before mentioned to be limited for bringing suits in said courts.

In what county actions shall be commenced.

SEC. 19. All civil actions and causes which may be instituted in any of the courts aforesaid, shall be commenced in the circuit court of the county in which the defendant may be found, or if it be a real action, action of ejectment, or trespass *quare clausum fregit*, then in the county in which the cause of action arose; and all actions so commenced, may be brought to issue, according to the rules that may be established for the orderly conducting and arrangement of business in the said courts; and if the said issue be an issue in fact, the same shall be tried by the jurors attending the said courts at the next succeeding term if there be time for the trial thereof, and the same be not continued by order of court: *Provided, always*, That if a freeholder of this state, is sued out of the county of his freehold and residence, unless in the actions enumerated in this section, the *venue* shall be changed, by order of the court, to the county of his residence and freehold: and no freeholder of the state, shall be held to bail, out of the county of his freehold and residence.

Provision respecting freeholders.

Style and teste of process.

SEC. 20. The style of all process shall be, "The State of Mississippi," and shall be tested in the name of the judge assigned to the circuit, within which the same may issue, and bear teste on the first day of the term next preceding that to which the same may be made returnable; and the clerk issuing the same shall mark thereon the day on which it shall be issued; and the sheriff or other officer receiving the same, shall mark thereon in like manner, the day he shall have received it; and every clerk, sheriff or other officer neglecting so to do, shall forfeit and pay the sum of two hundred dollars, to be recovered by action of debt in any court of record having cognizance thereof, with costs, by any person who shall sue for the same. And all original process, and all subsequent process thereupon to bring any person or persons to answer to any action, suit, bill, or plaint, in any court in this state, (subpœnas for witnesses excepted, which may be issued in term time and made returnable immediately,) shall be issued and signed by the clerk of such court, with the seal of office thereto affixed, and shall be returnable on the first day of the term next succeeding that at which the same shall bear teste, and shall be executed at least five days before the return day thereof; and any writ or process, except as aforesaid, which shall issue within five days before the commencement of the term of any court, shall be made returnable to the term next after that to be held within five days as aforesaid and not otherwise; and all writs and process issued made returnable or executed in any other manner, or at any other time, than is herein before directed, may be abated upon the plea of the defendant.

Clerk and shff's duty.

When returnable.

When to be executed.

Sec. 21. Whenever the judge of any circuit court shall be either plaintiff or defendant in any suit or action commenced within the circuit to which he is assigned, *all* process in such suit or action, shall bear teste in the name of the judge assigned to any adjoining circuit, any thing in this act to the contrary notwithstanding.

Teste of process when the judge is party.

Sec. 22. It shall be the duty of the clerk or plaintiff's attorney to endorse on all writs to compel the appearance of any person or persons, to answer any civil suit or action, instituted in said courts, the nature of the suit or action, whether founded on bond, bill, promissory note, or other written contract, covenant or agreement, or on open account, and the amount of the sum actually demanded, or whether the same be brought to recover damages for wrongs and injuries done to the person or property of the plaintiff, and also, whether bail be or be not required, and the sum for which bail is required; and the sheriff or other officer, on executing such writ, shall deliver to the defendant or defendants a copy of the same, and the endorsement made thereon as aforesaid. And if the sheriff or other officer shall fail or neglect to return any writ to him directed, on the first day of the term to which the same is returnable, he shall be liable on the expiration of a rule for the return of such writ, to be fined for a contempt of the court, in such sum as the said court shall think just and reasonable.

Nature of action to be endorsed on the writ.

Also, whether or not bail is required.

Liability of shff neglecting to return writ.

Sec. 23. In every suit which shall or may hereafter be ordered or directed on any administration, testamentary, collector's or

In suits on certain bonds, name of the party at whose instance instituted to be endorsed on the writ.

Party liable for costs.

sheriff's bond, or on any other bond made payable to the governor and his successors in office, or to the judge or judges of any court in this state, for the faithful performance of any trust, duty or office, the clerk or plaintiff's attorney shall, and he is hereby directed to endorse on the writ the name or names of the party or parties at whose instance, and for whose use, the said suit was instituted; and in case the said action shall or may be struck off, discontinued or *nonprossed*, or in case there be a judgment or verdict in favor of the defendant, the party or parties at whose instance the action was instituted shall be answerable for the legal costs of suit, and may be proceeded against by attachment against the person or property of such party or parties for the recovery of the same, in the same manner as if he, she or they, had been entered by a rule of court the security for such costs of suit; *Provided*, That nothing in this act shall be construed to alter the present existing laws of this state relative to the payment of costs by executors or administrators.

SEC. 24. Whereas joint obligors, and other persons against whom a joint cause of action may exist, frequently reside in different districts or counties, so that the same process cannot reach both or all such persons, whereby parties having just demands are greatly delayed in recovering the same. For remedy thereof:

Joint actions against persons residing in different counties.

Be it enacted, That where any such joint cause of action shall exist, it shall be lawful for the plaintiff in such suit or action, to sue out two or more writs, directed to the sheriff or other proper officers of the different counties where such defendants or parties jointly chargeable may be found; which process such sheriff or other officer shall execute accordingly, and return to the court from which the same issued, as in other cases; and such writs so issued and returned, shall be filed together, and shall have the same force and effect, and the same proceedings and recovery may be had thereupon, as if one writ only had issued against all the defendants jointly, but it shall be the duty of the clerk issuing such process, or of the attorney to endorse thereon, that both or all of the said writs are for one and the same cause of action, or otherwise the same shall abate on the plea of the defendant.

Death of joint obligors.

SEC. 25. That in case of the death of one or more joint obligor or obligors, the joint debt or contract, shall and may survive against the heirs, executors and administrators of the deceased obligor or obligors, as well as against the survivor or survivors; and when all the obligors shall die, the debt or contract shall survive against the heirs, executors and administrators, of all the said joint obligors.

Joint bonds, covenants &c. deemed joint and several.

SEC. 26. Every joint bond, covenant, bill or promissory note, shall be deemed and construed to have the same effect in law, as a joint and several bond, covenant, bill or promissory note; and it shall be lawful to sue out process and proceed to judgment against any one of the obligors, covenantors or drawers of such bond, covenant, bill or promissory note, in the same manner as if the same were joint and several: any law, usage or custom to the contrary notwithstanding.

Defendant, when held to bail of course.

When, on affidavit.

Sum to be endorsed on the writ.

When held to bail by order of court.

SEC. 27. In all actions to be commenced in any court of record in this state, and founded on any specialty, bill or note in writing, signed by the defendant, or on the judgment of any court foreign or domestic, or, upon any penal statute expressly requiring bail to be taken, the nature of such action being endorsed on the writ as herein before directed, the defendant or defendants shall be held to bail of course, for the sum or sums so endorsed; and in all actions of account, covenant broken, and actions founded on verbal contracts and assumpsits in law, in which the plaintiff or other credible person can ascertain the sum or sums due, or damages sustained, and either of them make affidavit thereof to the best of his or her knowledge and belief, before the clerk of the court in which such writ issues, or one of the judges, or justices thereof, or before any justice of the peace, the clerk of such court, or the attorney for the plaintiff shall endorse on the writ the sum so sworn to, and the defendant or defendants shall be held to bail for the sum so endorsed; and it shall be the duty of the plaintiff or his attorney, or the clerk, to file such affidavit forthwith, in the clerk's office from which such writ may issue, and in actions sounding merely in damages, where the same cannot be ascertained as aforesaid, the defendant or defendants shall not be held to bail, except by order of the court, or some one of the judges or justices thereof, upon sufficient cause shewn by affidavit, and such order and the sum for which bail is required be endorsed on the writ, as aforesaid.

Persons unlawfully held to bail.

Endorsement when no bail is required.

Bail bonds.

Sheriff when to be deemed and stand as special bail.

SEC. 28. Every person unlawfully held to bail, may be discharged therefrom, on motion to the court, into which the writ is made returnable, on filing common bail. And in every action wherein bail is not required, the process may be by *capias ad respondendum*, and the clerk or plaintiff's attorney shall endorse thereon, that "no bail is required." And when any writ shall issue from any court of record in this state, whereon bail is required, the sheriff or other officer, to whom the same may be directed, shall take a bail bond with sufficient security, or securities, in the penalty of double the sum for which bail is required by the endorsement on such writ; and the sheriff or other officer shall return such writ, with the name or names of the bail by him taken, endorsed thereon, and the bail-bond shall be filed by him on the day of appearance. And in case the sheriff or other officer neglect to take such bond, or the bail returned be held insufficient, on exception taken and entered of record during the term to which such writ shall be made returnable, the sheriff or other officer having reasonable notice of taking such exception, shall in either case be deemed and stand as special bail; and the plaintiff may proceed to judgment against such sheriff or other officer, as in other cases against special bail.

Assignment of bail bond.

SEC. 29. All bail bonds, returned and filed as aforesaid, shall be assigned by the sheriff or other officer returning the same, by endorsement thereon, in the following form, to wit: "I ——, sheriff (or coroner as the case may be,) of the county of ——, do hereby assign the within obligation and condition to ——, his executors and administrators, to be sued for according to the statute in such cases made and provided. In witness whereof I have hereunto set my hand and seal, this —— day of —— in the year of our Lord ——." And any sheriff or other officer, failing to make such assignment, shall be deemed and held as special bail, in the same manner as if no bail had been taken.

Bail taken according to the directions of this act to be deemed as special bail.

Bail may surrender principal at any time before final judgment.

Bail may arrest and secure the principal.

SEC. 30. All bail taken according to the directions of this act, shall be deemed, held and taken as special bail, and as such be liable to the recovery of the plaintiff. But the plaintiff shall not proceed against such bail, until a *capias ad satisfaciendum* hath been returned by the sheriff, that the defendant is not found in his proper county, when the plaintiff may proceed against such bail, on *scire facias* as in other cases. And the bail shall have liberty at any time before the return of the first *scire facias* against him or them, returned *scire feci*, or of the second returned *nihil*, or at any time before final judgment obtained against him or them, to surrender the principal to the court from which the process issued, or to the sheriff of the county, during the sitting of such court, or to the sheriff in the recess of such court, in discharge of himself or themselves, on payment of costs, however, in either case of such *scire facias;* and such bail shall at any time before such final judgment, have full power and authority to arrest the body of the principal, and secure him, until he shall have an opportunity to surrender him to the sheriff or the court, as aforesaid, and such sheriff is hereby required to receive such surrender, and hold the body of the defendant in custody as if bail had never been given. And such surrender and commitment, duly certified to the clerk by the sheriff, in vacation, or being entered of record in open court, in term time, shall, in either case, discharge the bail.

Proceedings on the return of *scire facias* against bail.

SEC. 31. When any *scire facias* shall be returned by the sheriff or other officer, to have been made known to the bail, and they in consequence thereof shall appear, they shall be obliged to plead, and the issue shall be tried during the term to which the process shall be returned, unless sufficient cause be shewn to the court, to the contrary; but the bail shall not be admitted to plead *non est factum*, unless they first file an affidavit of the truth of such plea: *Provided, nevertheless*, That if any sheriff shall return on any *scire facias*, to him directed, that the principal is imprisoned by virtue of any process, civil or criminal, the court to which such *scire facias* is returnable, shall, on motion of the plaintiff or bail, order and direct that such principal be retained where he shall be a prisoner, until the plaintiff's judgment and costs be satisfied, or he, or she otherwise discharged by due course of law; a copy of which order being served on the keeper of such prison, before such prisoner's release, shall be sufficient authority for him to retain such prisoner, until such order be complied with, and shall be deemed a surrender of the principal, and a discharge of the bail. And the bail in any action shall have a right to plead in bar to any *scire facias* against him, her or them, the death of the principal at any time before final judgment thereon: and if on the trial of any such issue, it shall be found that the principal is not living, judgment shall be given in favor of the defendant, but he shall nevertheless, be liable for the costs on such *scire facias*.

Death of principal may be plead in bar.

Sec. 32. In all actions where bail is required, and the original process is returned executed, and the defendant shall fail to appear according to the commands thereof, the bail in such action may, if he think proper, defend the suit, and shall, in that case, be subject to the same judgment and recovery, as the defendant might or would have been subject to; and in actions of detinue the bail shall be subject to the restitution of the thing sued for, whether animate or inanimate, or the alternate value according to the judgment of the court; and the bail-piece shall be so altered in such cases, as to authorize the bail, in addition to the privileges already allowed him by law, to restore the thing sued for, and if the sheriff in such cases, shall not take or return bail as required of him, or the bail returned shall be adjudged insufficient by the court, and the defendant shall fail to appear and give bail, in such case the sheriff, in addition to the privileges already allowed him by law, shall have the like liberty of defending such action, and be subject to the same recovery, as is provided above in the case of bail; and if the bail or sheriff depart this life before judgment be confirmed against him, in that case the judgment shall be confirmed against his executors or administrators, or in case there be no executor or administrator duly appointed, then judgment may be confirmed against his estate, and a writ of *fieri facias* may, in either case be issued against such deceased bail or sheriff as if he were living, and levied on his estate. And, in all cases wherein the bail being adjudged insufficient, judgment shall be rendered against the sheriff, his executors, administrators, or estate, such sheriff and his representatives shall have the same remedy against the estate of the bail, as against the estate of the defendant.

Bail may defend suit on failure of defendant to appear.

Bail in action of detinue.

Sec. 33. Where any sheriff shall return that he hath taken the body of any defendant and committed him to the prison of the county in which the arrest was made, which is hereby declared to be the proper prison for confinement, the plaintiff may enter the defendant's appearance, and he shall be at liberty to plead as if such appearance had been entered by himself, and the plaintiff may proceed to judgment as in other cases: Nev-

Plaintiff may enter appearance for defendant when in prison ertheless, the defendant shall not be discharged out of custody, but by putting in bail, or by rule of court, or special order of one of the judges thereof.

Any judge or justice may take recognizance of bail.

Sec. 34. Any judge of the supreme court, justice of the county court, or justice of the peace, may take recognizance of bail, in any action depending in any court of record within this state; which shall be transmitted by the person taking the same before the next succeeding court, to the clerk of said court, to be filed with the papers in such action; the form of which recognizance shall be in substance as follows, to wit: "

Form.

county, to wit : Memorandum, that upon the ——— day of ——— in the year ———, E. F. of the county of ———, personally appeared before me, one of the judges of the supreme court, (or justice of the county court, or a justice of the peace, as the case may be,) and undertook for C. D. at the suit of A. B. in an action of ——— now depending in the ———, (here name the court where the suit is depending) that, in case the said C. D. shall be cast in the said suit, he the said C. D. will pay and satisfy the condemnation of the court, or render his body to prison in execution for the same, or that he, the said E. F. will do it for him.

Given under my hand this ——— day of ———

G. H."

Objections to bail so taken.

To which bail, so taken, the plaintiff may object at the next succeeding term of the court in which the suit or action is depending, on giving the defendant reasonable notice of such objection; and if the court shall be of opinion, that the bail is insufficient, the defendant shall be again ordered into custody, and the suit or action remain in the same situation as if no such bail had been given.

Defendant surrendered by bail may be discharged by giving other special bail.

Sec. 35.* Any defendant surrendered into custody, or committed by his bail, in manner herein provided, may, at any time before final judgment shall have been rendered in the action, discharge himself from such surrender or commitment, by giving other good special bail: *Provided*, That the sufficiency of such bail shall be verified on oath, to the satisfaction of the court, judge or justice, taking the same; and the recognizance thereof, shall be duly filed with the clerk of the court wherein the suit is depending, before such defendant shall be discharged.

Bail discharged when defendant is carried out of the state by proper authority.

Sec. 36. If any defendant, having given special bail in any action, shall afterwards be lawfully arrested and delivered over to the executive authority of the United States, or of any state or territory thereof, upon a charge of any crime committed out of the jurisdiction of this state, and shall thereupon be carried beyond the limits of this state, such bail shall be discharged from his recognizance in the same manner as if such defendant had died at the time of such arrest and delivery.

SEC. 37. When any defendant shall be in custody on a *capias ad satisfaciendum*, and shall deliver in a schedule of his whole estate, and take the oath of an insolvent debtor, according to law, and be discharged from prison, a certificate of such discharge, from the authority lawfully granting the same, shall entitle the bail of such defendant, in all cases to an *exoneretur*, to be entered in court, which bail shall thereafter be discharged from his recognizance in the same manner as if he had surrendered his principal in court, or to the sheriff, as herein before provided.

Bail discharged when defendant shall take the oath of an insolvent debtor.

SEC. 38. Objections to the sufficiency of bail shall be decided by the court, without delay, on such evidence as it may deem satisfactory, and the burden of the proof should be on the party affirming the sufficiency.

Objections to the sufficiency of bail, how decided.

SEC. 39. In all cases where judgment hath been or shall hereafter be entered up in any court of record in this state, against any person or persons as bail for another, and the amount of such judgment or any part thereof, hath been paid or discharged by such bail, his, her, or their heirs, executors or administrators, to obtain judgment by motion against the person or persons for whom he, she or they were bound, his, her or their heirs, executors or administrators, for the full amount of what shall have been paid by the said bail, his or her heirs, executors or administrators, in any court where judgment may have been entered up against such bail.

Remedy of bail

SEC. 40. When the sheriff or other proper officer shall return on any writ of *capias*, to answer in any civil action, that the defendant is not found within his county, the plaintiff may either sue out an *alias* or *pluries capias*, until the defendant shall be arrested, or a *testatum capias*, where the defendant shall have gone into another county; or may, at his election, sue out an attachment against the estate of the defendant, to force an appearance; and if the sheriff or other officer shall return that he hath attached any goods, and the defendant shall not appear and replevy the same, by entering his appearance and giving special bail, in case he shall be ruled so to do, the plaintiff may file his declaration, and proceed to final judgment, in the same manner as if the defendant had been arrested. The goods attached shall remain in the hands of the officer, until such final judgment be entered, and then be sold in the same manner as goods taken upon a *fieri facias*. And if the judgment shall not be thereby satisfied, the plaintiff may sue out execution for the residue; and in case more goods be attached than will satisfy the judgment, the surplus shall be returned to the defendant.

Plaintiff may sue out an *alias pluries* or *testatum capias* or attachment.

Goods attached

SEC. 41. Where any sheriff or other officer shall return, on any original writ to him directed, that he has been kept off by force of arms, it shall and may be lawful for the plaintiff in the action in which the process so returned was issued, either to is-

Return of sheriff that he has been kept off by force.

sue an *alias* or *pluries*, as the case may be, or to proceed in the said action against the defendant or defendants, as if such process had been returned executed.

Proceedings when process is executed and for want of return thereof, subsequent process issues.

Sec. 42. If any writ or process shall be executed, and for want of a return thereof to the office from which it issued, an *alias*, *pluries*, attachment or other process be awarded, the sheriff shall not execute such subsequent process, but shall return the first process by him executed, if it be in his possession; but if it be not in his possession, then he shall return the subsequent process, with an endorsement of the execution of such first process, and the name of the bail, if any were taken; and shall also return a copy of the bail bond, on which there shall be the same proceedings, as if the said first process had been duly returned.

Scire facias for the renewal of judgment.

Sec. 43. On writs of *scire facias* for the renewal of judgments, no judgment shall be rendered on the return of two *nihils*, unless the defendant resides in the county, or unless he be absent from the state, and hath no known attorney therein. But such *scire facias* may be directed to the sheriff of any county in the state, wherein the defendant or his attorney shall reside or be found, which being returned *served*, the court may proceed to judgment thereupon, as if the defendant had resided in the county.

Scire facias and ca. sa. where no bail is required how served.

Sec. 44. All writs of *scire facias* and of *capias ad respondendum*, where no bail is required, may hereafter be served in the following manner: Where the defendant cannot be found, it shall be deemed a sufficient service of such writ, for the sheriff or other officer to whom the same is directed, to leave a copy thereof, with the wife of the defendant, or some free white person above the age of sixteen years, then and there being one of the family of the defendant, and found at his usual place of abode, or to leave a copy thereof at some public place at the dwelling house, or other known place of residence of such defendant, he being from home, and no such free white person being found there willing to receive the same.

Suits that shall be tried at the return term.

Sec. 45. All suits or actions founded on any bond, note, bill, cotton receipt, accounts for goods, wares, and merchandizes sold and delivered, money had and received, money lent and advanced, money paid, laid out and expended, shall be put to issue and tried in the manner heretofore provided, at the term to which the writ shall be returned executed: *Provided*, The declaration in such suit or action, be filed in the clerk's office at the time of issuing the writ, and the writ be executed at least twenty days before the term to which the same is returnable; and the clerk or plaintiff's attorney shall endorse on such writ, that judgment will be required at the return term thereof; *And, provided also*, That the court may on cause shewn by affidavit, continue any such suit or action, on the same grounds as continuances are usually granted.

Proviso.

Process in suits against governor, judges of the supreme court, chancellor or sheriff.

SEC. 46. In all suits or actions which may be commenced against the governor of the state, any judge of the supreme court or court of chancery, or the sheriff of any county, during his continuance in office, instead of the ordinary process, a summons shall issue directed to the sheriff or other proper officer, reciting the cause of action, and commanding him to summon such defendant to appear, and answer the same, on the proper return day; and if such defendant being summoned, or after a copy shall have been left at his usual place of abode, five days before the return day, shall not appear to answer the same, the court shall proceed against such defendant, in the same manner as if he had been taken upon a *capias ad respondendum: Provided, always*, That after judgment and the return of a *fieri facias*, by the sheriff of that county where the defendant in such case resides, that no effects, or not sufficient, are to be found in his county, to satisfy the judgment aforesaid, a *capias ad satisfaciendum* may be issued as in other cases.

Death of either party to suits depending that survive by law.

SEC. 47. When any suit or action shall be depending in any court in this state, and either of the parties shall die before final judgment, the executor or administrator of such deceased party, either plaintiff or defendant, shall have full power (in case the cause of action by law survive) to prosecute or defend such suit or action to final judgment, and the defendant is hereby obliged to answer thereto accordingly. And the court before which such suit or action may be depending, is hereby empowered and directed to hear and determine the same; and to render judgment for or against such executor or administrator, in the same manner, as if the original party or parties to the suit or action, were in existence; and if such executor or administrator, having been duly served with a *scire facias*, or citation from the office of the clerk of the court where such suit or action is depending, fifteen days before the meeting thereof, shall neglect or refuse to become a party to the suit or action, the court may proceed to render judgment against the estate of the deceased party in the same manner as if the executor or administrator had voluntarily made himself a party to the suit or action; and the executor or administrator who shall become a party as aforesaid, shall, upon motion to the court wherein the suit is depending, be entitled to a continuance of the same until the next term of the court.

Suits not to abate on death of nominal plaintiff.

SEC. 48. If any suit or action shall be commenced in any court of record in this state, in the name of any person, for the use and benefit of another, the same shall not abate by the death of the nominal plaintiff, but shall progress to final judgment, and execution may be awarded thereon, in like manner as if brought in the name of the person for whose use and benefit such suit or action was instituted, who shall be liable for the costs of suit as in other cases; and in case the party for whose use and benefit a suit or action shall be brought, shall die before final judgment, it shall be lawful for the party representing such deceased person, as executor or administrator, to

Person for whose use suit is instituted liable for costs.

be entered on the records and papers of such suit or action in the place of such deceased person.

Several matters may be plead.

SEC. 49. The defendant in any cause may plead as many several matters, either of law or fact, as he may judge necessary to his defence: *Provided*, He be not admitted to plead and demur to the whole.

Truth of pleas in abatement and *non est factum* to be proved by oath.

SEC. 50. No plea in abatement shall be admitted or received, unless the party offering the same shall prove the truth thereof, by oath or affirmation, as the case may require; and no plea of *non est factum*, offered by any person, charged as obligor, covenantor, or grantor of a deed, shall be admitted or received, unless the truth thereof shall in like manner be proved by oath or affirmation; and where any person, other than the obligor, covenantor or grantor, shall be the defendant, such defendant shall prove by oath or affirmation, that he or she verily believes that the deed, on which the action is founded, is not the deed of the person charged as obligor, covenantor, or grantor.

In real and mixed actions defendant may plead that he holds jointly with some person not named in the writ

SEC. 51. In all actions real and mixed which shall hereafter be brought for the recovery of any lands, tenements, or hereditaments within this state, the defendant may plead in abatement to the writ, that he holdeth the lands, tenements, and hereditaments, jointly with some other person not named in the writ, and if such plea be overruled, judgment shall be entered for the plaintiff, and if a writ of enquiry be awarded, the party pleading such false plea, shall pay the plaintiff double damages; but, if the plea be sustained, the writ shall be abated, and the defendant shall recover of the plaintiff full costs: *Provided*, That no such plea shall be admitted or received, unless the party offering the same, shall make oath or affirmation, as the case may be, of the truth thereof.

Party to make oath of the truth of plea.

Death of either party in real or mixed actions.

SEC. 52. Where any action real or mixed, is now or shall be depending in any court of this state, for the recovery of any lands or tenements, and any party thereto shall die before verdict rendered, such action shall not abate, if the same be maintainable by or against the heir or devisee of the deceased party. But the plaintiff, or if he be dead, his heir or devisee, may have a *scire facias* against the defendant, or if he be dead, against his heir or devisee, to shew cause generally why such action shall not be proceeded in to a final judgment. Upon the return of such *scire facias* executed, if no good cause be shewn to the contrary, such heir or devisee shall be made a party to the action, and the cause shall proceed in the same manner as if such heir or devisee had been originally a party thereto: *Provided*, That such heir or devisee shall have liberty to plead *de novo*, or to amend the pleadings in such manner as the nature of the case may require; and that he shall be entitled to a continuance of the action for one term after such *scire facias* returned executed.

Death of one or more of several plaintiffs or defendants.

Death of either party between verdict and judgment.

Death of plaintiff before verdict.

SEC. 53. In suits or actions, real, personal and mixed, if there be two or more plaintiffs or defendants, and one or more of them should die, if the cause of action should survive to the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants, the suit or action shall proceed in the name of the surviving plaintiff or plaintiffs, against the surviving defendant or defendants; and in all suits or actions commenced and prosecuted in any court of law in this state, where either party shall die between verdict and judgment, such death shall not be suggested in abatement, but judgment shall be entered as if both parties were living; and if on the death of any plaintiff, in actions which survive, before verdict, the heir, legatee or devisee, executor, administrator or other legal representative of such deceased party shall not appear voluntarily, on the return of a *scire facias* executed, and become a party to such action, as herein before provided, on or before the second term of the court next after the death of such party shall have been suggested on the record, such action shall be discontinued, unless good cause be shewn to the contrary.

Actions of account.

SEC. 54. Actions of account may be brought and maintained against the executors or administrators of every guardian, bailiff and receiver, and also by one joint tenant or tenant in common, his executors or administrators, against the other as bailiff, for receiving more than comes to his just share or proportion, and against the executors or administrators of such joint tenant, or tenant in common.

Assignment of breaches.

SEC. 55. In all actions on any bond, or on any penal sum for the non-performance of covenants or agreements, in any indenture, deed or writing contained, the plaintiff or plaintiffs may assign as many breaches as he or they may think fit; and the jury upon trial of such action or actions shall and may assess damages for such of the breaches as the plaintiff shall prove; and on such verdict, the like judgment shall be entered, as heretofore has been usually done, in such actions. And where judgment on a demurrer, or by confession, or *nihil dicit*, shall be given for the plaintiff, he may assign as many breaches of the covenants or agreements as he may think fit: upon which a jury shall be summoned, to enquire of the truth of every one of those breaches and to assess the damages the plaintiff shall have sustained thereby; and execution shall issue for so much; and the judgment shall remain as a security to the plaintiff, his executors and administrators, for any other breaches which may afterwards happen; and he or they may have a *scire facias* against the defendant, his executors or administrators, and assign any other breach; and thereupon, damages shall be assessed, and execution issue as aforesaid.

Judgment on bonds for the payment of money.

SEC. 56. In all actions which shall be brought upon any bond or bonds for the payment of money, wherein the plaintiff shall recover, judgment shall be entered, for the penalty of such bond, to be discharged by the payment of the principal and the interest due thereon and the costs of suit, and execution shall issue accordingly; or if, before judgment, the defendant shall bring into court the principal and interest due upon such bond, he shall be discharged, and in that case judgment shall be entered for the costs only.

Interest when partial payments are made

SEC. 57. When partial payments are made on bonds, contracts or assurances for the payment of money or property, that bear interest agreeably to the laws of this state, the interest that has then accrued, shall be first credited, and the balance of such partial payment shall be placed to the payment of the principal. And all debts due by the judgment, sentence or decree of any court, shall bear interest in the same manner as other debts.

Interest on judgments.

Payment plead in bar in actions of debt.

SEC. 58. In any action of debt on a single or penal bill, or in debt or *scire facias* upon a judgment, or in debt upon a bond, if before action brought the defendant hath paid the principal and interest due by the defeasance or condition, he may plead payment in bar. And it shall and may be lawful for the defendant or defendants in any suit or action, founded on any writing under seal, by a special plea to impeach, or go into the consideration of the same, in the same manner as if the said writing had not been sealed, any law to the contrary notwithstanding.

Consideration may be impeached.

Actions on writings filed in a suit in another court.

SEC. 59. If any action be brought on a bond or other writing, filed in any suit brought thereupon in any other court of this state, it shall be sufficient for the plaintiff to file with his declaration a copy of such bond or other writing attested by the clerk of the court in which the original may be filed; and the defendant or defendants shall be obliged to plead thereto, in like manner as if the original bond or writing was filed, and such copy shall be admitted as evidence on the trial. If however, the defendant or defendants shall plead, that the original bond or writing is not his, her or their deed, the clerk of the court having such original paper in his custody, shall on being summoned as a witness, attend with the same, on the trial of the issue, for the inspection of the jury.

Account to be filed in *indebitatus assumpsit*

SEC. 60. In every action of *indebitatus assumpsit*, the plaintiff shall file with his declaration, an account stating distinctly the several items of his claim against the defendant; and in failure thereof he shall not be entitled to prove before the jury, any item which is not so plainly and particularly described in the declaration, as to give the defendant full notice of the character thereof.

Account to be filed when payment or set off is plead.

SEC. 61. In every action in which a defendant shall desire to prove any payment or set off, he shall file with his plea an account, stating distinctly the nature of such payment or set off, and the several items thereof; and in failure to do so, he shall not be entitled to prove before the jury, such payment or set off, unless the same be so plainly and particularly described in the plea, as to give the plaintiff full notice of the character thereof.

Certain actions sued as transitory actions.

Sec. 62. All actions of debt for rent in arrear, all actions on the case for the use and occupation of lands and tenements, and all actions of waste, may hereafter be sued and prosecuted in the circuit court of the county in which the defendant may reside or be found, in like manner as transitory actions may now be sued and prosecuted therein.

Defendant may plead payment of all or part of a debt, and give bond, bill, receipt &c. in evidence.

Sec. 63. If two or more dealing together, be indebted to each other upon bonds, bills, bargains, promises, accounts, or the like, and one of them commence an action in any court, if the defendant cannot gainsay the deed, bargain or assumption, upon which he is sued, it shall be lawful for such defendant to plead payment of all, or part of the debt, or sum demanded, and give any bond, bill, receipt or account in evidence; and if it shall appear that the defendant hath fully paid or satisfied the debt or sum demanded, the jury shall find for the defendant, and judgment shall be entered that the plaintiff shall take nothing by his writ, and shall pay the costs. And if it shall appear that any part of the sum demanded be paid, then so much as is found to be paid, shall be defalked and deducted out of the plaintiff's demand; and the plaintiff shall have judgment for the residue only, with costs of suit. But if it appear to the jury that the plaintiff is overpaid, then they shall give in their verdict for the defendant, and withal, certify to the court, how much they find the plaintiff to be indebted or in arrear to the defendant, more than will answer the debt or sum demanded.—And the sum or sums so certified, shall be recorded with the verdict, and shall be deemed a debt of record; and if the plaintiff refuse to pay the same, the defendant, for the recovery thereof, shall have a *scire facias* against the plaintiff in the said action, and have execution for the same, with the costs of that action.

Verdict when plaintiff is overpaid.

When demurrer is joined court to regard only the defects alleged, unless &c.

Sec. 64. When a demurrer shall be joined in any action, the court shall not regard any other defect or imperfection in the writ, return, declaration or pleadings, than what shall be specially alleged in the demurrer, or causes thereof, unless something so essential to the action or defence, as that judgment according to law, and the very right of the cause cannot be given, shall be omitted.

Judgment, when demurrer to declaration is not sustained

Sec. 65. In all suits or actions, founded on any writing obligatory, bill, promissory note, or other writing for the payment of a sum certain, if the defendant shall demur to the declaration, and the demurrer be not sustained, on joinder and argument, the court shall proceed to enter up final judgment for the plaintiff, for the sum due and interest; and no plea to the suit or action shall be admitted unless the defendant make oath or affirmation, as the case may require, that he hath a good and substantial defence, in law, setting forth fully the nature of such defence, that the court may judge whether the plea shall be admitted or not. And in case such suit or action be not for a sum certain founded on a writing obligatory or other writing as aforesaid, a writ of inquiry shall be awarded, and executed forthwith, in case the defendant be not allowed to plead on the oath or affirmation before required. And the court may in all cases, except in a demurrer to evidence, refuse on motion, to receive a demurrer manifestly frivolous, and intended for delay, and proceed to trial as if the same had not been offered.

Court may refuse to receive frivolous demurrer.

Judgment, when demurrer to plea is sustained.

Sec. 66. If the plaintiff in any suit or action, shall demur to the plea of the defendant, and the demurrer be sustained on joinder and argument, the judgment of the court shall be *respondeat ouster*; but in such case, the defendant shall be compelled to plead to the merits of the suit or action, and the plaintiff shall not thereby be delayed of his trial.

Judgment on demurrer, confession, *non sum informatus nil dicit*, or by default when final.

Sec. 67. All judgments, on demurrer, confession, *non sum informatus*, *nil dicit*, or by default, in actions of debt, for a sum certain, and in actions founded on any instrument of writing ascertaining the sum due, and not set aside during the term of the court at which they are entered, shall be final on the last day of the term, and executions may issue thereon for the amount of such judgments, with legal interest, by way of damages, to be calculated by the clerk of such court, up to the time of rendering the same, and made a part of the original judgment, with costs of suit. And in all actions where the sum due does not appear by any instrument of writing as aforesaid, and all actions sounding in damages, if the defendant do not appear, and plead, answer or demur, according to the rules which may be established by the court, interlocutory judgments may be taken, on which writs of inquiry shall be awarded, which may be executed, at the same term of the court, at which such writs of inquiry shall be awarded, by the jurors attending said court, and executions may issue for the damages assessed by the jury, and costs of suit, as in other cases. And after a writ of inquiry shall be executed, and judgment rendered thereon by the court, the same shall not be set aside, unless good cause be shewn therefor on oath or affirmation, as the case may require, and in such case, the defendant shall plead to issue immediately, and the plaintiff shall not thereby be delayed of his trial.

Interlocutory judgment, when taken and writ of inquiry awarded.

Court to have control over proceedings clerk's office during vacation

Sec. 68. The court shall have control over all the proceedings in the clerk's office, during the preceding vacation, and may correct any mistakes or errors which may have happened therein, and may for good cause shewn, set aside any of the said proceedings, and make such order concerning the same, as may be just and right, and may also for good cause shewn, reinstate any suit or action discontinued during such vacation.

Sec. 69. If any information, suit or action, shall be brought or exhibited against any person or persons, for any offence committed or to be committed against the form of any penal law, on behalf of any informer, or on behalf of the state and any informer, it shall be lawful for such defendant or defendants to plead the general issue, and give any special matter in evidence to the jury, which shall be as available to him or them, as if he or they had sufficiently pleaded the same matter in bar, or discharge of such information, suit or action.

In informations &c for an offence against any penal law persons may plead the general issue and give special matter in evidence.

Sec. 70. When any original process shall issue out of any court of law in this state, by the direction of any attorney for any person or persons residing therein, the plaintiff or his attorney, at the return of such process, or at any time thereafter, before final judgment, shall, upon the motion of any person interested, be ruled to give sufficient security for all costs accruing in such suit or action; and if such plaintiff or his attorney shall fail to give such security, being thereto required, as aforesaid, the suit shall be in fact dismissed, and execution may issue against the plaintiff or his attorney for all such costs.

Security for costs may be required at the return of original process.

Sec. 71. Every suit or action at law, commenced in the name of any person residing out of this state, shall be dismissed if security be not given with the clerk of the court from whence the process shall issue, or wherein it shall be depending, within sixty days after notice shall, at any time during such non-residence, have been given to the plaintiff or his attorney, by some person interested, that such security is required for the payment of the costs which may be awarded to the defendant, and also of the fees that are or may become due to the officers of the court; and after security shall be so given, if the fees be not paid at the time the same become due, it shall and may be lawful for the court in which the suit or action was commenced, to enter up judgment on motion against such security, and award execution accordingly. And any clerk may require security for costs, of non-residents, before he issues any original writ. In all cases where security for costs may be required under the foregoing provisions, and a question shall arise as to the residence of the plaintiff, the burden of proving such residence shall be upon him.

Security for costs to be given by non-residents within 60 days after notice.

Clerk may require security for costs of non-residents before he issues the original writ.

Sec. 72. When any plea in abatement shall, upon argument in any court of law, be adjudged insufficient, the plaintiff shall recover full costs to the time of over-ruling the plea, the attorney's fee only excepted; and when by an interlocutory judgment, any other part of the pleadings shall be adjudged insufficient, all costs occasioned by such insufficient pleading, shall be adjudged against him who committed the fault.

Costs, when pleadings are aejudged insufficient.

Sec. 73. Every new trial granted at law, shall be on such terms and conditions as the court shall direct, and no more than two new trials shall be granted to either party in the same cause.

New trials how granted.

Which party entitled to costs

SEC. 74. In all cases, in civil suits or actions, the party in whose favor judgment shall be given, or in case of non-suit, dismission, or discontinuance, the defendant, shall be entitled to full costs, except when it is or may be otherwise directed by law.

Laws of costs.

SEC. 75. The laws of costs shall not be interpreted as penal laws.

Taxes on law process.

SEC. 76. All taxes imposed on law process or proceedings shall be included in the bill of costs.

Non-suits when to be taken.

SEC. 77. Every person or persons, desirous of suffering a non-suit on trial, shall be barred therefrom, unless he or they do so before the jury retire from the bar.

Adverse possession.

SEC. 78. In controversies affecting lands, tenements, and hereditaments, possession of part shall not be construed as possession of the whole, when an actual adverse possession can be proved.

Private acts given in evidence.

SEC. 79. Private acts of assembly may be given in evidence without being specially pleaded, and as printed with the general acts of the legislature.

Papers read to the jury.

SEC. 80. Papers read in evidence on the trial of any cause, though not under seal, may be carried from the bar by the jury.

Interpreters.

SEC. 81. Interpreters may be sworn truly to interpret when necessary.

Scroll affixed by way of seal.

SEC. 82. Any instrument, to which the person making the same, shall affix a scroll, by way of seal, shall be adjudged and holden to be of the same force and obligation, as if it were actually sealed.

Papers relating to a cause to be preserved.

SEC. 83. All declarations, pleas, evidences, and other papers relating to any cause in court, shall be carefully preserved by the clerk, and be filed together in his office.

Actions of ejectment.

SEC. 84. In actions of ejectment the process shall be according to the course of the common law, except that the return thereof, shall be made according to the laws of this state; and in all such actions, the defendant or defendants being duly summoned, and appearing in lieu of the casual ejector, shall be allowed to plead the general issue only, and may make such defence, and may give such special matter in evidence, under such plea, as would be good and valid in law, if the same had been specially pleaded in bar of the action; and where two verdicts shall be given in succession, for the plaintiff or defendant, and judgment be rendered thereon, no new ejectment shall be brought; but where there may be verdict against verdict between the same parties, and judgment thereon, a third ejectment in such case, and verdict and judgment thereon, shall be final and conclusive as to the rights of such parties.

Sec. 85. Every tenant, to whom any declaration in ejectment shall be delivered for any lands, tenements or hereditaments, shall forthwith give notice thereof to his or her landlord or landlords, or his, her, or their agent or lawful attorney, under the penalty of forfeiting the value of three years rent of the premises, so demised or holden in the possession of such tenant, to the person of whom he or she holds, to be recovered by action of debt, in any court of record in this state, having jurisdiction thereof.

Tenant receiving declaration in ejectment to give notice to the landlord.

Sec. 86. It shall and may be lawful for the court where such ejectment shall be brought, to suffer the landlord or landlords, to make himself, herself, or themselves, defendant or defendants, by joining with the tenant or tenants, to whom such declaration in ejectment shall be delivered, in case he, she, or they shall appear; but in case such tenant or tenants shall refuse or neglect to appear, judgment shall be signed against the casual ejector for want of such appearance; but if the landlord or landlords of the whole, or any part of the lands, tenements or hereditaments, for which such ejectment was brought, shall desire to appear by himself, herself, or themselves, and consent to enter into the like rule, that by the course of the court the tenant in possession, in case he or she had appeared, ought to have done, then the court wherein such ejectment shall be brought, shall and may permit such landlord or landlords so to do, and order a stay of execution upon such judgment against the casual ejector, until they shall make further order therein.

Court may suffer landlord to make himself defendant with tenant.

Tenant neglecting to appear judgment to be signed against casual ejector.

Landlord may be permitted to appear by himself.

Sec. 87. All certificates issued in pursuance of any act of congress by any board of commissioners, register of a land office, or any other person or persons duly authorised to issue such certificate, founded on any warrant, or order of survey, or in right of donation, pre-emption or purchase from the United States, for any lands in this state, shall be taken and received as vesting a full, complete and legal title in the person in whose favor the said certificate is granted, to the lands therein mentioned, and his, her or their assigns, so far as to enable the holder of such certificate to maintain any action thereon; and the same shall be received in evidence as such, in any court in this state.

Certain certificates to be received in evidence.

Sec. 88. In all actions of ejectment in any of the courts of this state, if the jury find the defendant guilty of the trespass and ejectment complained, and it shall be made to appear to their satisfaction that the defendant has a crop then planted or growing upon the premises in question, they shall assess in their verdict, such rent as shall be reasonable and just for the plaintiff to have and receive for the use of said premises, during such time as shall, in their opinion, be sufficient to enable

Jury giving verdict against defendant, in ejectment, to assess rent for time to secure crop.

the defendant to gather and secure his crop from off said premises; and no writ of *habere facias possessionem* shall issue upon any such verdict, until the expiration of the time so allowed by the jury, if the defendant in such action shall enter into bond at any time during the term of the court at which the same was tried, with sufficient security to be approved by the said court, in the penalty of double the amount of the rent so assessed by the jury, payable to the plaintiff, conditioned for the payment of the rent assessed as aforesaid, at the expiration of the time fixed by the jury for the defendant to hold possession of said premises. And all bonds taken as aforesaid, shall be filed in the clerk's office of the proper court, and shall have the force and effect of a judgment; and if the same be not discharged according to the condition thereof, execution may issue thereon against the principal and his security for the sum therein mentioned as upon other judgments in said court.

Defendant may retain possession on entering into bond.

Bond to be filed and have the effect of a judgment.

Form &c. in personal actions

SEC. 89. In all personal actions, where the declaration shall plainly set forth sufficient matter of substance, for the court to proceed upon the merits of the cause, the suit shall not abate for want of form.

Exceptions to form and substance in ejectment.

SEC. 90. After issue joined in an ejectment, on the title only, no exception of form or substance shall be taken to the declaration, in any court whatsoever.

Judgment not to be stayed or reversed for certain defects.

SEC. 91. No judgment, after the verdict of twelve men, shall be stayed or reversed, for any defect or default in the writ, original or judicial; or for a variance, in the writ, from the declaration or other proceedings; or for any mispleading, insufficient pleading, discontinuance, misjoining of issue; or lack of warrant of attorney; or for the appearance of either party, being under the age of twenty one years, by attorney, if the verdict be for him, and not to his prejudice; or for not alleging any deed, letters testamentary, or of administration, to be brought into court; or for omission of the words, *with force and arms, or against the peace;* or for mistake of the christian name, or surname of either party, sum of money, quantity of merchandize, day, month, or year, in the declaration or pleading, (the name, sum, quantity or time being right in any part of the record or proceeding;) or for omission of the averment, *this he is ready to verify;* or, *this he is ready to verify by the record;* or for not alleging, *as appeareth by the record;* or for omitting the averment of any matter, without proving which, the jury ought not to have given such verdict; or for setting forth, by way of recital, any matter which ought to have been set forth by averment; or for not alleging that the suit or matter is within the jurisdiction of the court; or for not alleging that the property in the declaration mentioned is the property of the plaintiff; or for any mistake or misconception of the form of the action; or for any other defect whatsoever, in the declaration or pleading, whether of form or of substance, which might have been taken advantage of by a demurrer, and which shall not have been so taken advantage of; or for any informality, in entering up the judgment, by the clerk: neither shall any judgment, entered by *nil dicit*, or *non sum informatus*, be reversed, nor a judgment after inquiry of damages, be stayed or reversed, for any omission or fault, which would not have been a good cause to stay or reverse the judgment, if there had been a verdict.

Verdict on several counts one of which is faulty.

Sec. 92. When there are several counts, one of which is faulty, and entire damages are given, the verdict shall be good; but the defendant may apply to the court to instruct the jury to disregard the faulty count.

Verdict in detinue omitting the value.

Sec. 93. If, in detinue, the verdict shall omit price or value, the court may, at any time, award a writ of inquiry to ascertain the same. If, on an issue concerning several things in one count, in detinue, no verdict be found for part of them, it shall not be error, but the plaintiff shall be barred of his title to the things omitted.

Judgment on confession.

Powers of attorney for confessing judgment.

Sec. 94. A judgment, on confession, shall be equal to a release of errors; but all powers of attorney for confessing, or suffering judgment to pass by default, or otherwise, and all general releases of error, made or to be made, by any person or persons whomsoever, within this state, before action brought, shall be, and are hereby declared to be, absolutely null and void.

Process duly served altho' not directed to the sheriff.

Sec. 95. An execution, writ, or other process, appearing to be duly served in other respects, shall be deemed good, although it be not directed to any sheriff.

Mistakes in the record of judgments, how amended.

Sec. 96. Where, in the record of any judgment or decree of any superior court of law or equity, there shall be any mistake, miscalculation or misrecital, of any sum or sums of money, quantity of merchandize or other thing, or of any name or names, and there shall be, among the record of the proceedings in the suit in which such judgment or decree, shall be rendered, any verdict, bond, bill, note or other writing of the like nature or kind, whereby such judgment or decree may be safely amended, it shall be the duty of the court in which such judgment shall be rendered, and of the judge thereof in vacation, to amend such judgment or decree thereby, according to the very truth and justice of the case: *Provided*, That the opposite party, his agent or attorney in fact, or at law, shall have had reasonable notice of the application for such amendment. And, if the transcript of such judgment or decree, at the time of such amendment, or at any time thereafter, shall be removed to the supreme court, it shall be the duty of that court, upon the inspection of such amended record, (to be brought before it by *certiorari*, if need be,) to affirm such judgment, if there be no other error apparent on such record.

Excess in bonds taken by virtue of an execution how released.

Sec. 97. Where any bond, taken by virtue of any execution, by miscalculation or mistake, shall be conditioned for the payment of a larger sum of money, than by law ought to have been required thereby, or where a verdict shall be rendered for more damages than the plaintiff shall have demanded by his suit, and judgment shall be rendered accordingly, and the court in which such judgment shall be rendered, shall have adjourned to another term, without release of such excess having been made, it shall be lawful for the plaintiff, at any time before the record of such judgment shall be removed into an appellate court at any future term of the court in which such judgment shall be rendered, to release in open court, any such excess; or, he may in vacation release the same by deed under his hand and seal, witnessed by the clerk or deputy clerk of such court, and filed of record among the papers of the cause; and such release, made in either of the forms aforesaid, shall cure any error growing out of such excess.

Release how made, when the record is removed into an appellate court.

Sec. 98. If the record of any such judgment be removed into an appellate court, before such release shall be made, it shall be competent for the defendant in error, to make such release as aforesaid, in the appellate court; and thereupon the said court, after reversing the judgment, shall proceed to give such judgment as the court below ought to have given, if the release had been filed therein.

Court may order the proceedings amended before verdict.

Sec. 99. The courts of law shall have full power and authority to order and allow amendments to be made in all proceedings whatsoever before verdict, so as to bring the merits of the question between the parties fairly to trial, and if amendment is made after the jury is sworn, a juror shall be withdrawn; and in all cases where amendments are made, the adverse party shall have time allowed him, in the discretion of the court, to prepare to support his case upon the state of the proceeding so amended, and such costs shall be allowed the party against whom such amendment may be made, as the court shall think just.

Things herein, not restricted, to be general

Sec. 100. All things herein contained, not restricted by their nature, or by express provision, to particular courts, shall be the rules of decision and proceeding in all courts whatsoever, within this state.

Clerk to enter in a docket the causes for trial and apportion the number for each day.

(*See Chap. 43 sec. 1.)

Sec. 101. Before every term of a circuit court of law, the clerk of such court shall enter in a particular docket,* all such causes (and those only) in which an issue is to be tried, or enquiry of damages to be made, or judgments by default entered which may be set aside during the term, or a special verdict case agreed, or demurrer, or other matter of law is to be argued, in the same order as they stand in the course of proceeding, and shall, under the control of the court, apportion the causes on the docket, to so many days, and in such numbers to each day, as may be deemed most expedient; and no cause shall be taken up for trial or hearing, at a day previous to that for which it may be set; and he shall issue subpœnas for witnesses, to attend on the days, on which the causes stand for trial: and no witness shall be bound to attend in any cause, unless specially summoned to each term, and it shall be the duty of the clerk to keep a regular subpœna docket, and to issue subpœnas before every term of the court, for all the witnesses in every cause, that either party may, at any time, have directed to be summoned.

To issue subpœnas for witnesses to attend on the day cases stand for trial.

Subpœnas for witnesses how issued, served and returned.

Sec. 102. For taking the testimony of witnesses, in all causes, which may be depending in any court of law of this state, the following rules shall be observed and put in practice, to wit: In all suits or actions, where witnesses are to appear at any of the said courts, the clerk, at the request of either party, shall issue a subpœna, directed to the sheriff or other officer, of the county where such witness or witnesses are said to reside, mentioning the time and place for his, her, or their appearance, the names of parties to the suit wherein the testimony is to be given, and the party at whose instance such witness or witnesses is, or are summoned. Every subpœna made returnable immediately, shall be issued only in term time, and shall be personally served on the witness or witnesses therein named. A copy of every subpœna, issued by the clerk in vacation, in case the witness or witnesses therein named, is, or are not to be found, may be left at their usual places of residence; and such copy certified by the sheriff or other officer, left as aforesaid, shall be deemed a legal summons, and the witness or witnesses therein named, shall be bound to appear in the same manner as if personally summoned.

Witness to attend, until discharged.

Sec. 103. Every witness being summoned to appear at any of the said courts, in manner as herein before directed, shall appear accordingly, and continue to attend from day to day, until discharged by the court, or the party, at whose instance such witness shall be summoned. And if it shall happen, that the suit so depending, shall, in the vacation, be accommodated and settled by the parties, and any witness shall be summoned to appear, and give evidence in such suit, and the party at whose instance such witness was summoned, shall neglect or omit to discharge him or her from further attendance, and he or she, for want of such discharge, shall attend at the next term; then, and in that case, the witness, upon oath made of the facts, shall be entitled to a ticket from the clerk, in the same manner as other witnesses, and shall receive from the party, at whose instance he was summoned, the same allowance which by this act is given to witnesses for their attendance at said courts.

Liability of witness failing to attend.

Sec. 104. If any person, duly summoned as a witness, shall fail to appear and attend as herein required, he may be fined by the court in a sum, not exceeding one hundred dollars, to the use of the party at whose instance he was summoned, and a *scire facias* shall issue, as in the case of defaulting jurors; and he shall be further liable to the action of the party, for the full damages which may be sustained for want of the testimony of such witness: *Provided always*, That if sufficient cause be shewn, by the person so summoned and failing to appear, before final judgment on such *scire facias*, of his or her incapacity to attend at the time and place mentioned in the *subpœna*, then no fine or penalty shall be incurred by such failure.

Witness on a criminal prosecution.

Sec. 105. Every witness summoned to appear in any of the said courts, on a criminal prosecution, or plea of the state, shall appear accordingly, and continue to attend from day to day, until discharged by the court, the attorney general, or district attorney, or by the party at whose instance he shall be summoned; and in default thereof, shall be fined by the court in a sum not exceeding one hundred dollars, for the use of the state or the party summoning him, as the case may be; unless on the return of a *scire facias* made known, and before final judgment, sufficient cause be shewn for such failure; and such witnesses shall be allowed the same compensation for their daily attendance, and the same mileage, as is allowed to witnesses attending in civil suits; and such compensation, together with all costs of prosecution, shall be paid by the defendant on conviction. And, in case the state shall fail in the prosecution of any offence of an inferior nature, the court may order the costs to be paid by the prosecutor, if the prosecution shall appear to have been frivolous or malicious; and, if on conviction, the defendant shall be unable to pay the costs of prosecution, or if the defendant be acquitted, and the costs be not taxed on the prosecutor, the witnesses appearing on behalf of the state, shall be paid the compensation aforesaid, out of the treasury of the state; and the certificate given by the clerk of the court in which such prosecution was determined, to any witness, specifying the amount of compensation to which he is entitled, with an endorsement thereon by such clerk, that the defendant is unable to pay the costs of prosecution, or that he was acquitted, and the costs not taxed on the prosecutor, as the case may be, shall be a sufficient voucher to authorize the anditor to issue his warrant on the treasurer, for the sum mentioned in such certificate.

How paid.

Amount of compensation

Sec. 106. For every mile any witness shall travel, either going to, or returning from the court to which such witness shall be summoned to appear, there shall be paid to him by the party, at whose instance the *subpœna* shall have issued, six cents per mile, together with the necessary ferriages, and one dollar and fifty cents for every day he shall attend, until he shall have given testimony, or shall be discharged. And the attendance of any witness as to the number of days, mileage, and ferriages, shall be determined by the oath or affirmation of such witness, which oath or affirmation, the clerk of the court to which such witness is summoned, is hereby authorised to administer, either

Proof of attendance.

in vacation or term time, who shall thereupon grant a certificate of the same to such witness; and if any witness shall swear falsely in order to obtain such certificate, he or she, shall on conviction, be adjudged guilty of perjury, and shall suffer, as in the case of wilful and corrupt perjury. And each witness summoned in any cause as aforesaid, shall be authorised to demand of the party, at whose instance he or she was summoned, at the expiration of each term, his or her compensation for attending at such term, and if the party shall refuse or neglect to pay such witness, he or she shall not thereafter be compelled to attend as a witness for the party so refusing or neglecting, until the compensation due for the attendance previously given, shall be paid; and moreover, such witness may sue for and recover the amount specified to be due in the certificate of the clerk, before any justice of the peace or in any court having jurisdiction thereof. And the party paying any witness may file the certificate given by the clerk as aforesaid, with the receipt of the witness thereon, in the clerk's office, to be deposited among the papers in such cause.

Compensation may be demanded at the end of the term.

Sec. 107. No witness shall be permitted to charge his attendance in more than one suit at the same time; but, if he be summoned to attend in several suits, he may charge his attendance to either of the parties by whom he shall be summoned, at his election. And there shall not be allowed in the bill of costs, the charge of more than two witnesses for the proof of any one particular fact.

Attendance allowed in but one suit at the same time, and of but two witnesses for proof of one fact.

Sec. 108. Witnesses shall be privileged from arrests in all cases, except treason, felony, and breaches of the peace, during their attendance at any court, or other place where their attendance shall, by *subpœna* first duly executed by a sworn officer, or by some indifferent person who shall have made oath to the due execution thereof, have been required; and in coming to, and returning from thence, allowing one day for every twenty-five miles from their places of abode: *Provided always*, That no person whatsoever, attending any of the courts in this state, or at any other place where their attendance may be lawfully required, shall be privileged from an arrest, by original or other process, unless such person shall be actually a witness in the cause or matter in such *subpœna* expressed.

Witnesses privileged from arrest.

Sec. 109. If any person summoned and attending, in any cause or matter, where his or her attendance may be lawfully required, shall refuse to give evidence upon oath or affirmation, (as the case may be,) to the best of his or her knowledge, every person so refusing shall be committed to prison by the court, commissioners, referees, or other persons authorised to take or receive his or her deposition or testimony, there to remain without bail or mainprize, until he or she shall give such evidence.

May be committed on refusal to give evidence.

Negroes, &c. incapable of being witnesses

SEC. 110. All negroes, mulattoes, indians, and all persons of mixed blood, descended from negro or indian ancestors, to the third generation, inclusive, though one ancestor of each generation may have been a white person, shall be incapable in law, to be witnesses in any case whatsoever, except for and against each other.

Persons convicted of any felony.

SEC. 111. No person convicted of treason, murder or other felony whatsoever, shall be admitted as a witness in any case whatsoever, unless he be first pardoned, or shall have received such punishment, as by law ought to be inflicted upon such conviction. And no person convicted of perjury, although he be pardoned or punished for the same, shall be capable of being a witness in any case.

Affirmation admitted in all cases.

SEC. 112. The liberty of giving testimony by way of solemn affirmation, shall be admitted in all cases whatsoever, criminal as well as civil; which affirmation shall be as good and effectual in law, as an oath taken in the usual form. And if any person shall falsely, wilfully and corruptly, affirm any matter or thing, which, if the same had been sworn or deposed in the usual form, would have amounted to wilful and corrupt perjury, then such person, so offending, shall be deemed and adjudged to be guilty of wilful and corrupt perjury, and on conviction thereof, shall be punished accordingly.

Depositions of witnesses unable to attend court.

SEC. 113. When any witness shall be about to depart the country, or by age, sickness or otherwise, shall be unable to attend the court; upon affidavit thereof, in open court, or before the clerk in his office, or before any judge, justice of the county court, or justice of the peace, of this state, the clerk of the court in which any suit is or shall be depending, may, on request of either party, issue a commission for taking the deposition of such witness, *de bene esse*, to be read as evidence at the trial, in case the witness should be unable to attend; but the party obtaining such commission shall give reasonable notice to the other party, of the time and place of taking the deposition; otherwise the same shall be void.

When the claim or defence depends on a single witness.

SEC. 114. If any party in a suit at common law, or in chancery, shall make oath that he verily believes his claim or defence, (as the case may be,) or a material point thereof, depends on a single witness, the court, or the clerk, in vacation, may award a commission to take the deposition of such witness, *de bene esse*, although he or she be not about to depart the country, nor under any disability; the party, in such case, giving reasonable notice of the time and place of taking such deposition, to the adverse party.

Depositions of officers who cannot attend trial.

SEC. 115. When any plaintiff or defendant, in any suit depending in any court of law within this state, shall wish to have the benefit of the testimony of any of the judges of the supreme court, or court of chancery, or any other officer of the government of the state, or of the United States, who, on account of his official duties, connot attend court to give testimony on the trial of such suit, the party wishing the benefit of the testimony of such judge or other officer, may, on application to the clerk of the court in which such suit is depending, obtain a commission to take the deposition of such judge or other officer, which commission the said clerk is hereby authorised to issue; and any deposition or depositions of such judge or other officer, taken before any two justices of the peace, in the county in which such witness or witnesses reside, shall be read in evidence on the trial of such suit: *Provided*, The adverse party have reasonable notice of the time and place of taking such deposition or depositions.

Deposition of a witness absent from the state may be taken by interrogatories.

Sec. 116. Whenever any party to a suit depending, in any court of law in this state, shall desire to take the deposition of any witness, absent from, or residing without, the limits and jurisdiction of the state, such party may take the same by interrogatories, on making oath or affirmation, as the case may be, of the absence or residence as aforesaid, of such witness, before any one of the judges, justices, or clerk of the court, where such cause is depending, and also that he believes the testimony of the witness to be material to his claim or defence; and such clerk shall, if the oath or affirmation be taken before him, or if taken before a judge or justice, and properly subcribed and certified to him, issue a commission, authorising and directing the commissioner or commissioners, to cause the witness or witnesses named in such commission, to appear before him or them, at a time and place, by him or them to be appointed: *Provided*, That the party applying for such commission, shall file his interrogatories in the clerk's office, and serve the opposite party with a copy thereof, with notice of the day on which such commission will issue, at least ten days before the same shall issue; in which time the opposite party may file his cross interrogatories: and a certified copy of such interrogatories and cross interrogatories, if any there be, shall accompany such commission; and if any deposition taken as aforesaid, shall contain any testimony, but the answers to such interrogatories, the same shall be deemed surplusage, and shall not be read in evidence. And any question put to the witness or witnesses, in such interrogatories, and the answer thereto, shall be subject to all legal objections, on the trial of the cause, in which any deposition is taken as aforesaid, and may be admitted or rejected by the court, in the same manner as if the witness or witnesses were present in court.

Opposite party to be served with copy of interrogatories and notice.

Questions and answers subject to legal objections.

Depositions how certified and reretumed.

Sec. 117. All depositions taken by virtue of this act, shall be sworn or affirmed to, by the witness or witnesses named in the commission, and examined, and shall be certified by the commissioner or commissioners, or a majority of them, to whom the commission for taking such deposition, may be directed, according to the laws, customs, and usages of the country, state or territory in which the deposition is taken; and the same so certified, together with every exhibit or voucher, relative thereto, in the possession of such commissioner or commissioners, or a majority of them, shall be by them sealed up and directed to the court, or the clerk of the court, where the cause is depending, and from which such commission issued, and transmitted in the most safe and convenient manner; and the said court, or one of the judges thereof, shall open and deposite the same in the clerk's office, there to remain among the papers in the cause; and every deposition taken, returned, or opened in any manner other than as herein before provided, shall not be received in evidence, except by consent of parties.

Admission of depositions as evidence.

SEC. 118. Every examination or deposition, so taken and returned by virtue of this act, shall be read, used and deemed as good and competent evidence in the cause in which it shall be taken, as if such witness had been present, and sworn or affirmed, and examined, *viva voce*, in open court, if it appear to the satisfaction of the court, that such witness is absent from, or resides out of this state, or is dead, or by reason of age, sickness, or bodily infirmity, or any other cause whatsoever, is unable to attend said court, but not otherwise: and unless the same shall be made to appear to the said court, then such examination or deposition shall not be admitted or used in the cause.

Subpœnas for witnesses to attend commissioners, referees &c.

SEC. 119. Whenever any witness shall be required to attend any commissioner or commissioners, for the purpose of having his or her deposition taken, in a cause depending, or which may be depending, in any court of law in this state; or to attend referees, or on any survey of lands, which may be made by order of court, the clerk of such court, on the application of either party, or of any one of the commissioners or referees, or of the proper surveyor, shall issue a *subpœna* for the witness whose attendance may be desired, expressing therein the particular day and place, when and where, he or she shall appear and give testimony, the names of the parties to the suit, and in whose behalf summoned; which *subpœna* shall be executed and returned in the same manner, and the witness appearing shall be entitled to the like compensation, as in the case of a summons to appear and testify in open court; and if any witness so summoned, shall fail to appear and give evidence according to his or her knowledge, he or she shall be subject to the same penalties as are provided for failing to attend and give evidence, in a cause depending in any of the said courts. And when the deposition of a witness, resident, or being in this state, shall be directed to be taken, by the order of the court of any state, territory, or district in the United States, or in any foreign country, it shall be lawful for the commissioner or commissioners, or any one of them, to issue a *subpœna* for such witness, to appear before him or them, on a day and at a place therein named, which shall have the same effect, in all respects, as if the same had been issued by the clerk of any court in this state.

Notice of taking depositions when one of the parties reside out of the state.

Sec. 120. When any commission shall be obtained to take the deposition of a witness, in a suit depending in any of the courts of this state, where the plaintiff or defendant in such suit doth not reside within the same, or hath not an agent or attorney therein, to whom notice of the time and place of taking such deposition can be given, then the person obtaining such commission, having published in any public newspaper in this state, four weeks successively, the time and place, when and where the witness is to be examined, and the name of the witness, together with the names of the parties to the suit in which such witness is to be examined, it shall and may be lawful for any plaintiff or defendant as aforesaid, to proceed to take any deposition authorised by the commission issuing from the court, agreeably to law, where the suit depends as aforesaid; and such deposition, when taken, and returned to the clerk's office agreeably to the rules of law and of the court from whence the commission issued, shall there be filed and allowed to be read in evidence, in the same manner, and under the like restrictions as if notice had been duly given to the opposite party; any law, usage or custom, to the contrary in any wise, notwithstanding. And the printer may demand and receive his usual allowance for publishing such advertisement four weeks, which shall be taxed in the bill of costs, as other costs of suit.

Warrant or attachment to compel the attendance of witnesses.

Sec. 121. If any witness residing within this state after being duly summoned according to law, to appear before any court, or at any other place, where his or her attendance may be lawfully required, shall fail or refuse to appear and testify, such court, or other authority before whom such witness is summoned to appear, shall issue a warrant or attachment directed to the sheriff or other proper officer of the county where such witness is to be found, to compel his or her attendance.

Assessor and collector to furnish clerk with a list of freeholders and householders.

Sec. 122. The assessor and collector of taxes, of each county within this state, shall, once in every two years, furnish to the clerk of the circuit court of his county, a list of the freeholders and householders who are citizens of the United States, residing within his county; which list shall be filed in the office of the clerk of the court to which the same is furnished; and the names on such list shall be put in a box, to be kept by the clerk for that purpose: And there shall be drawn by such clerk, and the sheriff of each county respectively, from said box, in open court, at each regular term thereof, one by one, the names of thirty six persons to serve as jurors at the next succeeding term of said court, except in the counties of Adams, Wayne, Wilkinson and Amite, in which the names of fifty one persons shall be drawn, as aforesaid; and the names of the jurors so drawn shall be entered on the minutes of the court, and the clerk shall issue a *venire facias*, accordingly, returnable to the

Jurors, how drawn in term time.

How summond.

next term of said court; and it shall be the duty of the sheriff at least five days before the term, to summon the jurors named in such *venire facias*, either by giving them personal notice, or by leaving a written notice at their usual place of abode, to attend according to such summons; and every juror, being summoned as aforesaid, who shall not attend, shall be liable to a fine, not exceeding one hundred dollars, unless good cause for his non-attendance be shewn, on or before the first day of the regular term of the court next after such default, or before final judgment on a *scire facias* issued against such defaulting juror; and if good cause be shewn, the fine so imposed, shall be remitted without payment of costs.

Penalty for non attendance.

How drawn in vacation.

SEC. 123. Whenever any circuit court shall not have been holden in any county in this state, as required by law, or if held, the clerk and sheriff should neglect to draw the number of jurors required as aforesaid, they shall, in the recess of the court, in presence of a justice of the county court, at least thirty days previous to the next term of said circuit court, proceed to draw, one by one, from the jury box, the number of jurors required for said court; and if any justice of the county court shall neglect or refuse to attend for the purpose aforesaid, having been by the sheriff thereunto required, then it shall be the duty of the clerk and sheriff to draw the same, and the clerk shall issue a *venire facias* for the persons so drawn to serve as jurors, as if the same had been done in open court.

Proceedings when the person drawn has removed or died.

SEC. 124. If, at the time any jurors are drawn by lot from the jury box, as directed by this act, it shall satisfactorily appear to the officers drawing the same, that the person or persons drawn, have removed from the county, or have died since the jury list was made out, then such person or persons so drawn, shall not be included in the number of jurors to be drawn, but they shall proceed to draw other jurors until the number is complete.

Names of persons drawn to be put into another box.

SEC. 125. After the clerk and sheriff shall have drawn from the jury box the number of jurors required by this act, the names so drawn shall be put into another box to be kept by the clerk of the court for that purpose, where they shall remain until the whole of the names are drawn, when they shall again be put into the box from which they were drawn; and if the clerk or sheriff shall be guilty of any fraud, collusion or partiality, in drawing jurors, such clerk or sheriff shall be deemed guilty of a misdemeanor, and shall be punished accordingly.

Fraud in drawing jurors.

Boxes, how furnished.

SEC. 126. The boxes aforesaid shall be furnished by the respective clerks, and secured with sufficient locks, to which no person but the clerk and sheriff, in drawing the jury, shall have access, and the same shall be a county charge.

Grand jury.

SEC. 127. From the whole number of jurors summoned as aforesaid, and attending the circuit court of any county, there shall be drawn by lot, not less than thirteen, nor more than eighteen, who shall constitute the grand jury for the term of the court to which they are summoned, and shall be sworn to inquire of, and present all treasons, murders, felonies or other misdemeanors whatsoever, which shall have been committed or done within the county for which they are empanneled.

Appointment of foreman.

SEC. 128. From the whole number of grand jurors, drawn as aforesaid, the court shall appoint a foreman, to whom an oath in the following words shall be administered, in the presence of the rest of the grand jurors:

Oath.

"You, as foreman of this grand inquest, shall diligently inquire into, and true presentment make of all such matters and things as shall be given you in charge, or otherwise come to your knowledge, touching the present service; you shall present no person through malice, hatred or ill-will; nor shall you leave any unpresented, through fear, favor or affection, or for any reward, hope or promise thereof; but in all your presentments you shall present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding, so help you God." And the following oath shall be administered to the other jurors, to wit:

"The same oath, that A. B. your foreman, has now taken before you on his part, you and each of you, shall well and truly observe and keep, on your respective parts, so help you God."

Privileged from arrest.

SEC. 129. Grand jurors shall be privileged from arrest in all cases, except treason, felony and breaches of the peace, during their attendance at court, coming to and returning from thence, allowing one day for every twenty-five miles from their places of abode; and all such arrests shall be void.

Presentments.

SEC. 130. When the grand jury make any presentment, they shall write at the foot thereof, the name and surname of the prosecutor or informer, if there be one; and the name of the town or county, in which he shall reside, with his title or profession, for the more effectual prosecution of such presentment. When a presentment shall be made upon the knowledge of one or more of their own body, the names of the grand jurors giving the information, shall be written at the foot of the presentment; and when a presentment shall be made on the testimony of a witness called on, either by the court or the grand jury, to give testimony concerning the same, the name of such witness shall likewise be written at the foot of the presentment.

Non attendance after being sworn.

SEC. 131. In case of the sickness, death or non-attendance of any grand juror or grand jurors, after he or they shall be sworn or affirmed, it shall be lawful for the court, at their discretion, to cause another or others to be sworn or affirmed, in his or their stead.

Petit jurors.

Sec. 132. After the grand jurors have been drawn, sworn or affirmed, the residue of the jurors summoned and attending said court, shall serve as petit jurors during the term; and the clerk of the court shall, on the first day of such term, administer to them the following oath, to wit:

Oath.

"You, and each of you, do solemnly swear, (or affirm, as the case may be,) that you will well and truly try all issues, and execute all writs of inquiry, that may be submitted to you, and left to your decision by the court, during the present term, and true verdicts give, according to the evidence, so help you God." Which oath or affirmation, shall authorise the said jury to try all issues, and execute all writs of inquiry which may be submitted to them during that term of the said court; and talismen, if any be summoned, shall in like manner, take an oath to try all issues, and execute all writs of inquiry which may be submitted to them, during the day for which they are summoned.

When the title of land is in issue, jury to be freeholders.

Sec. 133. The petit jury, where the title of land is in issue, shall be composed of freeholders; and in all cases when from challenges or other causes, there shall be a deficiency of jurors, the sheriff or other proper officer attending such court, shall by order of the court, summon a sufficient number of qualified by-standers to complete the panel; but if the sheriff or other officer be interested, the return of qualified by-standers shall be made by such disinterested person as the court shall appoint: *Provided*, That all persons who have made the first payment on purchase of lands from the United States, together with donation and pre-emption claimants, shall be deemed and held, to all the purposes of this act, freeholders.

Court may fine talisman for non appearance.

Sec. 134. It shall be lawful for the court to fine any person summoned as a talisman, who, being present when he is called, does not appear in court, or who, after appearance, wilfully withdraws himself during the same day, in any sum, not exceeding thirty dollars.

Jury *de medietate linguæ*.

Sec. 135. A jury *de medietate linguæ* may be directed by any of the said courts, whenever in the opinion of the court, it may be necessary.

Testimony of jurors.

Sec. 136. Jurors knowing any thing relative to the point in issue, shall disclose the same on oath or affirmation in open court.

Sheriff not to converse with a juror.

Sec. 137. No sheriff shall converse with a juror, but by order of the court, after the jury have retired from the bar.

Persons incapable of serving on a jury.

Sec. 138. No person under the age of twenty one, or above the age of sixty years, nor any person who is not a citizen of the United States, (except where a jury *de medietate linguæ* may be directed,) nor any person who has been convicted of felony, perjury, forgery, or other offence punishable with stripes, pillory or burning in the hand, shall be capable to serve on a jury for the trial of any cause civil or criminal, whatsoever.

Sec. 139. Any grand or petit juror, who shall be guilty of a contempt of the court, may be fined by such court, in any sum not exceeding thirty dollars. Jurors may be fined for contempt.

Sec. 140. All fines imposed on any juror under this act, shall be collected by the sheriff, and paid into the county treasury of the proper county, for county purposes. Fines, how disposed of.

Sec. 141. At every special term of any circuit court, a grand jury shall be empanneled in like manner as at a regular term of said court. Grand jury at a special term.

Sec. 142. In all civil suits hereafter to be tried in any of the circuit courts of this state, each plaintiff and defendant shall have the privilege of peremptory challenge to the number of four of the jurors called to try such suit or suits; any law, usage or custom to the contrary notwithstanding. Peremptory challenge in civil suits.

Sec. 143. Each petit juror of the original *venire* shall be allowed the sum of one dollar for each and every day he shall attend in any of the said courts as a juror, to be paid by the county treasurer at each term of the court, out of the money collected on taxes on law process, which is hereby set apart for that purpose, and out of no other fund in the county treasury; that each grand juror shall be allowed the same compensation as is allowed to petit jurors; which compensation shall on the certificate of the clerk, be paid out of the state treasury, or received in payment of state taxes, and not out of any jury or county fund. Compensation of jurors.

Sec. 144. No judge of any of the said courts, shall charge the jury as to the weight of evidence in any cause, civil or criminal, but such judge may sum up the testimony and declare any matter of law arising thereon. Charge to the jury.

Sec. 145. If in the trial of any cause in any circuit court, either the plaintiff or defendant shall think himself or herself aggrieved by the charge, direction or decision of the judge, the party so considering himself or herself aggrieved, may in person, or by his or her counsel, tender to the judge giving such charge, direction or decision, a bill of exceptions to his opinion, stating therein the matters of law wherein he is supposed to err, and the judge shall be bound to sign and seal the same, and the bill of exceptions so signed and sealed, shall be made and considered a part of the record in the cause; and in case the judge shall refuse to sign and seal a bill of exceptions, so tendered, if the facts therein be truly stated, he shall be deemed guilty of a high misdemeanor in office. Bills of exception.

In prosecutions. SEC. 146. In the prosecution of any person or persons for * any crime or misdemeanor, in any court of law of this state, it shall be the duty of the judge or justices, before whom such prosecution is pending, to sign and seal any bill of exceptions tendered to the court, during the progress thereof: *Provided*, The truth of the case be fairly stated in such bill of exceptions. And thereupon, the said exceptions shall, by the clerk of the said court, be entered in the record of such prosecution, and become to all intents and purposes, a part thereof.

Judgment and execution. SEC. 147. The said courts may grant judgments according to the principles and usages of law, in all cases cognizable before them, and award executions, directed to the sheriff or other proper officer of any county in this state, which shall be executed and returned according to the commands thereof; and said courts are authorised and required to try all offenders indicted or presented by a grand jury, and upon legal conviction of the accused, by the verdict of a petit jury, or on confession of guilt in open court, to proceed to judgment and award execution thereon, as the law directs.

Questions adjourned and appeals. SEC. 148. The said circuit courts, when a question new or difficult arises, on which the judge may doubt as to the rule of decision, may adjourn such question or matter of law to the next supreme court; or any party thinking himself or herself aggrieved by the judgment of said courts, may appeal therefrom as of right, and the party praying such appeal shall enter into bond, with good and sufficient security, to be approved of by the court, in such penalty as said court shall direct, with condition to pay the amount of the recovery, and all costs and damages awarded, in case the judgment or sentence be affirmed; and where several appeal, bond and security being given by any party, shall be sufficient. And the judge of any circuit

Points reserved &c. in prosecutions.

court, may at his discretion, with the consent of the person accused, on a point reserved, motion in arrest of judgment, or for a new trial, in any criminal case, respite the judgment or sentence, and reserve such point, or motion for the consideration and decision of the supreme court, at their next succeeding term; which may be there argued and decided, though such accused person be not present; and the supreme court shall pronounce such sentence or judgment, as the circuit court ought to have pronounced; and in case the same be against the person accused, to award execution accordingly.* And in all cases not capital, so removed into the supreme court, the defendant shall enter into recognizance, with one or more good and sufficient securities, to be approved of by the judge of the circuit court, in which the prosecution is depending, in such sum as shall be directed by said court, to appear before the supreme court, at their next succeeding term, and abide the sentence or judgment which may be there pronounced against him.

(*See Chap. 15 Sec. 9.)

Writs of error, how granted.

Sec. 149. No writ of error shall be allowed by the supreme court, or any judge thereof, unless such court or judge shall be of opinion from an inspection of the record, judgment or decree, that there is good cause to reconsider the said judgment or decree; and no writ of error shall operate as a *supersedeas*; nor shall any *supersedeas* be granted of any judgment or decree, unless the plaintiff or plaintiffs in error first enter into bond, to the adverse party, with good and sufficient security, to be approved of by the court or judge granting the writ, conditioned that the plaintiff in error shall prosecute his writ to effect, and for the payment of the judgment or decree, damages, interest and costs, in case such judgment or decree shall be affirmed, and also, for the performing of the sentence, judgment or decree, which the supreme court may render therein: And in case the supreme court shall affirm entirely, any judgment or decree brought before them, if such judgment or decree be for the payment of money, the plaintiff in error, if he be the defendant below, shall pay to the defendant in error, ten *per centum* damages on the amount due, besides interest from the time of rendering the original judgment or decree.

Damages.

Appeals and writs of error when granted.

Sec. 150. No appeal shall be taken from the judgment of any circuit court, unless the same be prayed for, and allowed, during the term at which such judgment was rendered; and no writ of error or *supersedeas* shall be granted in any case until final judgment in the circuit court.

Clerk to give either party a copy of the record on application.

Sec. 151. When any appeal, writ or error or *supersedeas* shall be granted on any judgment or decree of a circuit court or court of chancery, the clerk of such court shall immediately make up a full and perfect record of all the proceedings in such cause, and shall, on the application of either party, give to such party, an attested copy of such record, with a taxation of all costs, which have accrued therein, and shall endorse on such copy, the day on which the some was demanded, and the day on which it is delivered, and sign his name as clerk thereto; and if by reason of the neglect or delay of any clerk, to give a transcript of a record in any cause as aforesaid, the same shall not be filed in the supreme court in due time, or if the record be erroneously or incorrectly made up, so that the supreme court cannot proceed thereon to a final decision, such clerk shall, in either case, upon conviction thereof, before any court of competent jurisdiction, be adjudged guilty of a misdemeanor in office, and shall be fined in a sum not exceeding two hundred dollars, to the use of the party entitled to such attested copy, and shall, moreover, be liable to an action on the case for all damages, which such party may sustain by reason of such neglect or delay: *Provided*, That if the supreme court should be of opinion, that there is sufficient matter of substance in the transcript of the record and proceedings on any appeal, writ of error or *supersedeas*, to enable them to proceed thereon to a final decision, the same shall not be dis-

Liability for neglect.

missed for want of form, any thing herein contained to the contrary notwithstanding.

Damages in case of dismissal, &c.

SEC. 152. If any party praying, and obtaining an appeal, writ of error or *supersedeas*, on any judgment or decree of a circuit court or court of chancery, to the supreme court, shall fail to prosecute such appeal, writ of error, or *supersedeas*, or shall dismiss the same, after the record shall be filed with the clerk of the supreme court, such party shall, if he be the defendant in the court below, pay to the appellee or defendant in error, the like damages on the judgment or decree of the court below, in case the same be for the payment of money, as if such judgment or decree had been entirely affirmed, and the clerk of such court shall issue execution thereon accordingly.

Proceedings before a justice of the peace not to be removed into the circuit court.

SEC. 153. No proceedings before a justice of the peace, for the recovery of any debt or demand, within the jurisdiction of such justice of the peace, shall be removed into any circuit court, by appeal, writ of error, *certiorari*, or in any other manner whatever.

Appeals from the county court how determined.

(*See Chap. 11 sec. 24.)

SEC. 154. When any person shall think himself or herself aggrieved by the judgment or sentence of any county court, in any suit or action which shall have been commenced in such court, and shall pray and obtain an appeal to the circuit court of the proper county, according to law,* the same shall be there heard and determined, in like manner, in all respects, as if the suit or action had originated in the circuit court, to which the appeal may be taken; and if judgment be given against the appellant the clerk of such court shall issue execution thereon, against the principal and securities in such appeal, for the debt or damages, and costs which shall have accrued, as well in the county court, as in the circuit court, where the final judgment may be rendered.

Transcript of the record, when to be filed.

SEC. 155. The transcript of the record and proceedings, in any suit or action, on which an appeal may be taken from the judgment or sentence of a county court, to any circuit court of this state, shall be filed in the office of the clerk of such circuit court, at least fifteen days before the term of said court next after the appeal is had; and if the appellant shall fail to file the same, as aforesaid, the judgment of the court below shall operate and be in force, in the same manner as if no such appeal had been taken; and upon receiving such transcript, the clerk of the circuit court shall give a receipt for the same, and endorse thereon the day on which it shall be delivered; and if he receive it fifteen days before the commencement of the next term of the court of which he is clerk, he shall enter such appeal on the docket of the causes for trial in said court, and deliver to either party, such subpœnas for witnesses, as they may require. And in all cases, if the circuit court shall be of opinion that an appeal is taken from the judgment, or sentence of the court below, to delay the payment of any debt or damages recovered against the appellant, it shall be lawful for such circuit court, on motion, to allow the plaintiff in the court below, ten *per cent.* damages, besides interest on the amount of the sum so recovered, and execution shall issue thereon accordingly.

Damages.

SEC. 156. It shall be the duty of the clerk of each circuit court, in this state, within three months after the final determination of any suit or prosecution, to make up and enter in well bound books, to be kept by him for that purpose, a full and complete record of all the proceedings in such suit or prosecution: and any clerk who shall fail to make and enter a full and complete record as aforesaid, shall, on conviction thereof, be deemed guilty of a misdemeanor in office, and may be fined by the court of which he is clerk, in a sum not exceeding twenty dollars, in each case where such full and complete record shall not have been made up and entered, as aforesaid, to be collected and paid into the treasury of the state, for the use and benefit of the literary fund. And in order to secure a due execution of the duty hereby required, the several parties to the suits or prosecutions shall, at all times, have a right to inspect the said books and records of the court, in the presence of the clerk, in order to see if the records of the suit to which he is a party, have been duly made up according to the directions of this act: and the clerk shall show the said books and records accordingly, under the penalty of fifty dollars, to be recovered and appropriated to the use of the party so applying and refused.

Clerk to record proceedings in all suits and prosecutions.

Penalty on failure.

Parties may inspect records.

SEC. 157. The several circuit courts shall make allowance to the clerks thereof, of all needful sums for supplying the offices with necessary books and presses for the records, and for the safe keeping of the books and papers belonging to their offices, respectively, on which allowance being certified to the county treasurer of the proper county, he shall pay the same out of any moneys in the treasury not otherwise appropriated.

Allowance for supplying the clerk's office.

SEC. 158. The several clerks of the circuit courts of this state, and their deputies, shall be, and they are hereby empowered to administer oaths in all cases wherein an affidavit is necessary, as the foundation of any official act to be performed by any such clerk, which affidavit shall be filed, and shall, in every respect, be as effectual as if the oath thereto had been administered by a justice of the peace. And if any person sworn by any such clerk or his deputy, by virtue of this act, shall give any evidence, under such circumstances as would have constituted the same to be perjury, if done in presence of a court of record, the same shall be deemed perjury to all intents and purposes.

Clerks may administer oaths in certain cases.

SEC. 159. For preventing errors in entering up the judgments and orders of the said courts, the minutes of the proceedings of every day shall be drawn up by the clerk, against the next sitting

Minutes to be read in open court.

of the court; when the same shall be read in open court, and such corrections as are necessary being made therein, they shall be signed by the presiding judge, and carefully preserved among the records. On the last day of each court, the proceedings therein shall be drawn up, read, corrected, signed and preserved as aforesaid.

Remedy of securities.

SEC. 160. In all cases where judgment hath been or may hereafter be entered up in any of the said courts against any person or persons, as security or securities, his, her or their heirs, executors or administrators, upon any note, bill, bond or other writing obligatory, and the amount of such judgment, or any part thereof, hath been paid or discharged by such security or securities, his, her or their heirs, executors or administrators, it shall and may be lawful for such security or securities, his, her or their executors or administrators, to obtain judgment by motion against the principal in such note, bill, bond or other writing obligatory, his, her or their heirs, executors or administrators, for the full amount which shall have been paid by the security or securities, his, her or their executors or administrators, in the court where such judgment may have been entered up against such security or securities, his, her or their heirs, executors or administrators.

Executions against joint securities.

SEC. 161. Where the principal in any note, bill, bond or other writing obligatory, have, or hereafter shall become insolvent, and there have been or shall be two or more securities jointly bound with such principal, and judgment hath been on hereafter may be obtained against one or more of such securities, it shall and may be lawful for the court in which such judgment was or shall be obtained, upon motion of the party or parties against whom judgment hath been entered up as security or securities aforesaid, to award execution against each and every of the securities, his, her or their executors or administrators, for their, and each of their respective shares and proportions of the said judgment: *Provided*, That nothing herein contained shall in anywise impair the obligation of each and every of the said securities, to pay and satisfy the whole of any such judgment in case of the insolvency of the other security or securities.

Executions against persons as special bail or as securities in a recognizance.

SEC. 162. When there shall be two or more persons bound as special bail for any defendant or defendants, or as security in a recognizance for the appearance of any person or persons, charged with a criminal offence, or the breach of any penal statute, and judgment shall be entered up against any one or more of the persons so bound as bail or security as aforesaid, it shall be lawful for the court in which such judgment shall be obtained, on motion, to award execution against the person or persons so bound as aforesaid, for their respective portions of such judgment, in the same manner as is provided in the case of joint securities, in any note, bill, bond or other writing obligatory.

No security to confess judgment &c. when principal will enter himself defendant, &c.

Sec. 163. No security or securities, his, her or their executors or administrators shall be suffered to confess judgment or suffer judgment to go by default, so as to distres his, her or their principal or principals, if such principal or principals will enter himself, herself or themselves, defendant or defendants to the suit, and tender to the security or securities, his, her or their executors or administrators, other good and sufficient collateral security to be approved of by the court before whom the suit shall be depending.

Court may hear motions against sheriffs and attorneys.

Sec. 164. The said court shall have power to hear and determine all motions, on reasonable notice to the adverse party, against sheriffs, coroners or other officers, for money received under execution or other process, or order of the court, which shall not be paid to the party entitled to the same, his agent or attorney, on demand; and all motions against attorneys and counsellors at law, for failing or refusing to pay money received for their clients; and to give judgment according to the statutes, in such cases made and provided, and award execution thereon accordingly.

Poor persons having cause of action.

Sec. 165. Every poor person, who shall have cause of action against any person within this state, shall have, by the direction of the court, before whom he would sue, writ or writs original, and writs of *subpœna*, according to the nature of his cause, nothing paying for the same; the said court shall direct their clerk to issue the necessary process, shall assign him consel learned in the laws, and appoint all other officers requisite and necessary to be had for the speed of the said suit, who shall do their duties without any reward for their counsel, help and business in the same. And all and every such poor person or persons, being plaintiff or plaintiffs in any such action or suit, so admitted by the court, shall not be compelled to pay any costs.

Persons within age having cause of action

Sec. 166. In every case, where such persons as be within age, may have cause of action, their next friend shall be admitted to sue for them.

Removal of suits from the county court to the circuit court by *certiorari*.

Sec. 167. If any person or persons shall desire to remove any suit depending in any county court, into the circuit court, a *certiorari* for such removal, may be granted by the circuit court for good cause shewn, upon motion, and ten days previous notice thereof given in writing to the adverse party; or in vacation, the party desiring such writ, shall, by petition to any judge of the supreme court, set forth his or her reasons, and make oath before a judge or justice of the peace, of the truth of the allegations of such petition; whereupon, any judge of the said court may, under his hand, order the *certiorari* to issue and direct the penalty of the bond, to be taken previous thereto, or may reject such petition, as to him shall seem just: *Provided*, That ten days previous notice of the time and place of applying for such writ, be given in writing to the adverse party, upon which order of the judge, the clerk shall issue the *certiorari*: *Provided*, That the party shall enter into bond, with sufficient security in the penalty so directed, with condition for satisfying the judgment, and costs, which shall be recovered against the party in such suit; which security shall be approved by the judge granting the *certiorari*; but if any suit so removed by *certiorari* shall be remanded to the county court, by *procedendo* or otherwise, such cause shall not afterwards be removed to the circuit court, before judgment shall be given therein in the county court.

When justice cannot be done in the county court.

SEC. 168. It shall be lawful for any judge of a circuit court, if it shall appear to him, that justice cannot be done in any cause depending in any county court within his circuit, and that it has come to the knowledge of the party after issue joined, or a writ of inquiry awarded, to award a writ of *certiorari* at the instance of either party, in the manner other writs of *certiorari* are awarded.

When the county court neglect to decide any suit.

SEC. 169. Whenever any county court within this state, shall unreasonably neglect or delay to decide any suit at law, which shall be depending in such court, upon application of either of the parties, so precluded from justice by the neglect or delay of the county court, any judge of a circuit court is hereby directed and authorised to issue writs of *certiorari*, to remove such cause or causes before the court of the circuit within which, such county may be, in the same manner as in cases of partiality or injustice.

Clerks to preserve affidavit and petition for *certiorari*.

SEC. 170. The clerks of the circuit courts shall carefully preserve all such petitions for writs of *certiorari*, with the affidavit thereto, in the office; and if any person, in such affidavit, shall wilfully make a false oath, and be thereof convicted, upon a prosecution commenced within three years after the offence committed, such offender shall suffer the pains and penalties directed for wilful and corrupt perjury.

Proceedings when a suit is removed by certiorari.

SEC. 171. When any suit or action shall hereafter be removed from any county court, to any circuit court, by writ of *certiorari*, such cause shall be placed in the same situation in such circuit court, as it stood in the county court, when such writ of *certiorari* was delivered. And it shall be the duty of every such circuit court to proceed to a final judgment in the manner such county court ought to have done, without any new pleadings, unless the same would have been proper if such suit had remained in the county court.

Change of *venue*. (*Certain provisions of this section are repealed, see Chap. 22.)

SEC. 172. Each judge of the said courts shall have power, on motion made in open court* and for good cause shewn, to change the *venue* in any cause depending in either of the courts hereby established within his circuit; so that such change be to some other court within the same circuit. And it shall be lawful for any judge of the said courts, in vacation, to remove any cause from one court in his circuit, to another court in his circuit; or to remove a cause depending in any court within his circuit, to the most convenient court in an adjoining circuit, in the same manner that he might remove the same in term time: *Provided*, That such removal in vacation shall only be by consent of parties, or upon the application of one party, reasonable notice thereof being given to the other party, and in no case whatever shall the *venue* be changed in any criminal prosecution.

Venue not to be changed in criminal prosecutions.

Sec. 173. If any judge of the said courts be interested in any suit, which in the case of any other person would have been proper for the jurisdiction of such judge, it shall be lawful to institute such suit in any court within an adjacent circuit; and the process from such adjacent court, may be served in the circuit to which such judge shall be allotted, or in which he shall reside, and proceedings shall be thereupon had.

Suits where instituted when the judge is interested.

Sec. 174. The judges of the said courts may, at any time, make a permanent exchange with each other, of the circuits to which they may be or have been assigned, and the said judges shall reside in the circuits so permanently changed. And it shall be lawful for them to make a temporary exchange with each other, of the circuits to which they are respectively assigned, by an arrangement made between any two of them, approved by the supreme court, and there entered of record: *Provided*, That such exchange shall not be for a longer period than one year at any one time. Whenever any such arrangement shall have been made, approved and recorded as aforesaid, it shall be the duty of each judge making such arrangement, to hold courts in the several counties of the circuit, to which the other may have been assigned, during the period of time for which the exchange shall have been agreed on, in the same manner as the judge assigned by law to that circuit is bound to do: *Provided*, That nothing herein contained shall be construed to authorise any judge, during the period of such exchange to reside out of the circuit to which he may have been assigned by law.

Judges may exchange circuits.

Sec. 175. Any judge of the said courts, in vacation, for good cause shewn, by affidavit, shall have power to order a *subpœna duces tecum* to be issued, returnable to any court to be holden by him, in like manner as the same could be ordered by him holding a session of the court.

Judges may order a *subpœna duces tecum.*

Sec. 176. The judges of the said courts, shall within their respective circuits, have power to grant writs of injunction, and of *ne exeat*, either in vacation or term time, and may order a defendant or defendants in chancery to be held to bail, in the same manner and under the same regulations, as such writs may be allowed, or bail ordered by the chancellor; and the process shall issue out of, and be returnable to the court of chancery, where the same is cognizable, and be subject to the like proceedings, as in other cases originating in said court of chancery.

May grant writs of injunction and *ne exeat.*

Court may fine and imprison for contempt.

SEC. 177. The said courts shall have power to fine and imprison any person who may be guilty of a contempt of the court, while sitting, either in the presence or hearing of such court: *Provided*, That such fine shall not exceed one hundred dollars, and no person for such contempt shall be imprisoned for a longer period than the term of the court at which the contempt shall have been committed.

Prisoners in custody for contempt.

SEC. 178. When any prisoner in custody for a contempt, shall be unable to support himself or herself in prison, the jailor shall be allowed a sum not exceeding fifty cents per day, for the maintenance of every such poor prisoner, to be paid out of the county treasury of the proper county; and no security shall be demanded of him or her, nor shall he or she be detained for such prison fees.

Jail and jailor.

SEC. 179. In all cases where the circuit court is holden at the county court house, the county jail shall be used as the jail of the circuit court; and the keepers of the jails of such counties, shall act as jailors for the said circuit courts, respectively, and shall attend them during their sessions, be amenable to their authority, and obedient to their lawful orders. They shall take into their custody all persons committed by the orders of the circuit courts, or by any process issuing from such courts, and all persons committed, by whatever lawful authority, for trial in such courts.

Sheriff's duty.

SEC. 180. The sheriff of the county, in which any circuit court shall sit, shall execute all judgments rendered by such court in any criminal case; provided such judgments are by law to be executed in the said county; and shall in all respects act as sheriff of the said court.

To summon constables.

SEC. 181. It shall be the duty of the sheriff of each county to summon not exceeding three constables, to attend the circuit court of his county, who shall attend accordingly, or pay a fine at the discretion of the court; not exceeding ten dollars.

Prison rules and bounds.

SEC. 182. The prison rules and bounds assigned by the several county courts, whose jails are used for the circuit courts, shall be the rules and bounds for all prisoners, entitled to the privilege of the rules, whether committed by the authority of the circuit courts, or by any other authority.

Prisoners to have the liberty of the bounds on entering into bond.

SEC. 183. Any person imprisoned in a civil action for debt, or damages, on original or mesne process, shall have the liberty of such prison rules and bounds, on entering into bond, with two sufficient securities, to the plaintiff, in double the sum of the debt, or damages, for which he is imprisoned; which said bond the sheriff or jailor shall take, with a condition in the form following, to wit: "The condition of the above obligation is such, that if the above bound A. B. a prisoner in the jail of —— county, at the suit of C. D. do and shall, from the date hereof, continue a true prisoner in the custody, guard and safe keeping of the keeper of said prison, or his steward, deputy or other officer, or of some of them, within the rules and bounds of said prison, as by law established, until he shall be thence discharged by due course of law, without committing any escape in the mean time; then this obligation shall be void, else to remain in full force and virtue." And the sheriff, who shall take said bond, shall file the same in the clerk's office from which the process issued; and in case the security to be approved by him shall be insufficient at the time the same is taken, such sheriff shall be liable for the debt, damages and costs, in the same manner, and under the like regulations, as in the case of insufficient special bail; and if the condition of such bond be broken, the same may be put in suit, and the debt, damages and costs, for which such person was imprisoned, together with ten *per cent.* damages thereon, shall be adjudged to the plaintiff, his executors or administrators, against the principal and his securities, or the sheriff, as the case may require, and execution may issue thereon accordingly.

Inspection of jails.

Sec. 184. It shall be the duty of the judges of the circuit courts, respectively, from time to time, as often as they may deem it expedient, at least once in every year, to cause an inspection to be made of the jails of the several counties within their circuits, respectively, and a report to be made to the court, of the condition of such jails, and of the manner in which they are kept. And if it shall appear, by the report aforesaid, or by other satisfactory evidence, that the jailor hath neglected or violated his duty, in the manner of keeping or furnishing any prisoner in his custody, or otherwise, it shall be lawful for such court to punish him, as for a contempt, in any sum not exceeding fifty dollars for each offence.

Allowance to clerk for services in behalf of the state.

Sec. 185. The judge of the circuit court of each county shall make such allowance to the clerk thereof for his services in behalf of the state, as may be deemed reasonable, to be paid out of the treasury of the state; which shall be deemed and taken, as full compensation to such clerk for all fees which may accrue on prosecutions in which the state may fail and the costs be not taxed on the prosecutor: *Provided*, The same shall not exceed fifty dollars for any one year.

Prosecutions wherein it may be unfit for the judge to preside.

Sec. 186. When, in any prosecution for an offence against the laws of this state, depending before any circuit court, the judge of such circuit court, shall be so nearly connected with the accused, or with the person upon whom the offence charged may be alledged to have been committed, as to render it unfit that the judge assigned to such circuit court, should preside on the trial, or when, for any other cause, it may be unfit that such judge should preside on such trial, he shall enter upon the record the cause of such unfitness, and that he is unwilling to preside upon the trial; whereupon the cause shall be continued until the next term, and the clerk of the circuit court shall forthwith certify to the supreme court, the pendency of such prosecution, and a copy of the entry testifying the unfitness and unwillingness of the judge to preside at the trial. The supreme court shall thereupon assign to the circuit, in which such circuit court may be, some other judge of the supreme court, whose duty it shall be, to hold all the courts within that circuit at their next succeeding terms, and to continue to hold them, from term to term, until such prosecution shall have been finally tried and decided. During the time the judge, so designated by the supreme court, shall hold the courts within that circuit, the judge, who had been assigned thereto by law, shall hold all the courts within the circuit, which by law had been assigned to the judge so designated by the supreme court.

Duty of clerks respecting fines &c. (*See Chap. 29 sec. 1. Chap. 30 sec. 1.)

Sec. 187. It shall be the duty of each and every clerk of a court,* within this state, to make out and certify to the auditor of public accounts, or county treasurer as the case may require, within one month after the rising of such court, a fair abstract of all fines, amercements and penalties, which shall be assessed, had or recovered in his court, at any term thereof, specifying therein the names of the persons, the amount of the fines, amercements and penalties, and the offences for which the same are assessed.

Seal.

Sec. 188. It shall be the duty of the clerk of each circuit court within this state, to procure, at the expense of the proper county, a seal for the use of their courts, respectively, with the style of the court around the margin thereof, and an eagle in the centre.

CHAPTER 14.

An act, to change the times of holding the circuit courts in the third judicial district.

Passed January 21, 1823.

Sec. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi, in general assembly convened,* That the circuit courts of Hancock county shall be held on the fourth Mondays of March and September, and may continue six days and no longer; in the county of Marion on the first Mondays of April and October, and may continue six days and no longer; in the county of Pike on the second Mondays of April and October, and may continue six days and no longer; in the county of Amite on the third Mondays of April and October, and may continue twelve judicial days and no longer; and in the county of Wilkinson on the first Mondays of May and November, and may continue twelve judicial days, and no longer.

Time of holding court.

Process, when to be returned.

Sec. 2. All original writs, mesne process, and other matter or proceeding, which was and is returnable, and returned to the several circuit courts in the third judicial district, shall be returned to the first term of the circuit court, to which they belong; and like proceedings shall be had thereon, and with like effect as could have been had, by law in the several circuit courts in the said third judicial district.

CHAPTER 15.

An act, to establish and organize the supreme court, and to define the powers and jurisdiction thereof.

Passed June 29, 1822.

Style of the court.

Sec. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi, in general assembly convened,* That there shall be established in this state, a court to be styled "The Supreme Court of the State of Mississippi;" which court shall consist of the judges heretofore appointed, or who may hereafter be appointed, by the general assembly, judges of the supreme court, not exceeding the number limited in the constitution, who shall continue in office during good behaviour, and each receive a salary of two thousand dollars, payable quarter yearly at the treasury of the state.

Salary of the judges.

Oath.

Sec. 2. Every judge of the supreme court, who shall hereafter be appointed, shall, before he enters upon the duties of his office, take the oaths required by the fourth section of the act, entitled "An act, to reduce into one, the several acts and parts of acts concerning the establishment, jurisdiction and powers of the superior courts of law," in the same manner, and be subject to the same penalties and forfeitures as are prescribed in the act above referred to: and it shall be the duty of each of the said judges to hold the courts directed by law in the several counties of the circuits to which they may be respectively assigned.

Time and place of holding court.

Sec. 3. The supreme court shall be held at the city of Natchez, on the second Monday of June and the second Monday of December in each year, and may continue until the business therein depending shall be disposed of.

Each judge to be assigned to the circuit in which he is to reside.

Sec. 4. Every judge of the supreme court, shall, at the time of his appointment, be assigned to the circuit in which he is to reside, and perform the duties of his office; and the circuit to which he is so assigned shall be expressed in his commission; and until the whole number of judges of the supreme court shall exceed four, any two of them shall constitute a court, and after they shall exceed that number, a majority of all the judges shall be necessary to constitute such court.

What number to constitute a court.

Jurisdiction.

Sec. 5. The said supreme court shall have jurisdiction over, and shall hear and determine all manner of pleas, plaints, motions, causes and controversies, civil and criminal, which are now pending therein, or which may be brought before it, from any circuit court of law, superior court of chancery, or orphans' court of any county in this state, either by appeal, writ of error, or *supersedeas*, or other legal means, and which shall be cognizable in said supreme court, according to the constitution and laws of this state: *Provided*, That no appeal, writ of error or *supersedeas* shall be granted, nor shall any cause be removed into the supreme court, in any manner whatsoever, until after final judgment or decree in the court below, except in cases particularly provided for by law.

May grant remedial writs &c

SEC. 6. The said court, or any judge thereof in vacation, may grant writs of error or *supersedeas*, to the judgments or decrees of the circuit courts of law, or superior court of chancery, and allow appeals from the decrees of the latter, in all such cases wherein writs of error or *supersedeas*, or appeals may be by law allowed, in the manner and on the terms and conditions as are prescribed by law, in cases of appeals, writs of error or *supersedeas;* and also, to grant writs of injunction, *habeas corpus*, *certiorari*, *ne exeat*, and all other remedial writs and process, grantable by the said judges, by virtue of their office, agreeably to the principles and usages of law, returnable as the law directs, either to the supreme court, or before any judge of said court, or to the superior court of chancery, as the nature of the case may require.

Reversal of judgment.

SEC. 7. When, on any appeal, writ of *error* or *supersedeas*, the judgment, sentence, or decree of the court below, shall be reversed, the supreme court shall proceed to render such judgment, or pass such sentence, or decree, as the court below should have rendered or passed: except it be necessary, in consequence of the decision of the supreme court, that some matter of fact be ascertained, or damages be assessed by a jury, or where the matter to be decreed is uncertain; in either of which cases, the suit, action, or prosecution, as the case may be, shall be remanded to the court from which it was brought, for a final decision.

Duty of clerk on final judgment.

SEC 8. When a final judgment or decree shall be rendered or passed, in any cause brought before the supreme court, by appeal, writ of error, or otherwise, it shall be the duty of the clerk of said court, to certify the final judgment or decree to the clerk of the circuit court of law, or superior court of chancery, or register of the orphans' court, (as the case may be) from which such cause was brought, within twenty days after the adjournment of the supreme court at which such final judgment or decree was rendered or passed, together with a bill of all costs which shall have accrued, and damages, if any assessed in the said supreme court; and it shall be the duty of every clerk of a circuit court of law, from which such cause was removed, on receiving such certificate, to issue execution on such final judgment at law, if the same be for the plaintiff in the original cause, for the amount of money or other thing adjudged to the plaintiff, and all costs which shall have accrued both in the supreme court, and the court below; and if judgment be rendered for the defendant in the original cause, then, on the receipt of the certificate thereof, as aforesaid, execution shall issue against the [illegible]ntiff in such cause, for the defendant's costs, as in other cases; [illegible] any decree, certified as aforesaid, to the clerk of the sup[illegible]or court of chancery, or register of the orphans' court, of any county in this state, shall be carried into effect, in the same manner, in all respects, as if such decree had passed in the court below. And if the clerk of the supreme court shall fail to certify any final judgment or decree as herein required, he shall forfeit and pay to the party aggrieved, one hundred dollars for every such failure, to be recovered by motion, before the supreme court, reasonable notice of such motion having been first given to such clerk.

Sentence in criminal prosecutions, how executed.

SEC. 9. The sentence of the supreme court, in all criminal prosecutions brought before such court from any circuit court of law, shall be executed in like manner in all respects, as if such sentence had been passed in the court wherein the prosecution originated; and the sheriff of the proper county shall be charged with the execution of such sentence.

Appeals from interlocutory decrees in chancery.

SEC. 10. All appeals allowed from interlocutory decrees of the superior court of chancery, by the chancellor, or by the supreme court, or any judge thereof in vacation, shall be heard and determined by the said supreme court, at the next succeeding term of the supreme court after such appeal shall be allowed: and it shall be the duty of the clerk of the superior court of chancery, when appeals shall be allowed from such interlocutory decrees, to make out a copy of the record, without delay; and should the party or parties at whose instance such appeal may be allowed, fail to file, with the clerk of the supreme court, a copy of the record, on or before the first day of the next succeeding term of the supreme court, after the allowance of such appeal, such appeal shall be dismissed, unless good cause be shewn to the contrary. And in all appeals taken from, and writs of *error* or *supersedeas*, granted to, the final judgments or decrees of any circuit court of law, or superior court of chancery, in case the copy of the record in the cause below, shall not be filed with the clerk of the supreme court, on or before the first day of the term, to which such appeal was taken, or writ of *error* or *supersedeas* may be returnable, it shall be lawful for the court, on motion of the defendant in error, and on producing a copy of the citation duly served on the defendant, to dismiss the cause; but the same may be reinstated at any time during the term, if good cause be shewn to the satisfaction of the court, why a copy of the record was not filed in due time.

Appeals &c. may be dismissed on failure to file copy of the record.

Clerk, how appointed in term time.

Oath and bond.

How appointed in vacation.

SEC. 11. For each of the said districts in which the supreme court is directed by this act, to be held, there shall be appointed a clerk in the following manner: In term time the appointment shall be made by an order entered of record in the proceedings of the court; and the person so appointed, before he enters on the duties of his office, shall take the oath prescribed in the constitution, in open court, and shall enter into bond, with tw[illegible]curities, to be approved by the court, payable to the govern[illegible] the state for the time being, and his successors in office, in the penalty of five thousand dollars, conditioned for the faithful performance of the duties of his office; and that he seasonably record the judgments, decrees, orders and decisions of said court, and deliver over to his successor in office, all records, minutes, books, papers, presses, and whatever belongs to his said office of clerk: which bond shall be recorded in the clerk's office of said court, and immediately thereafter be deposited in the office of the secretary of state, and shall not be void on the first recovery, but may be put in suit and prosecuted, at the costs and charges of any party injured, until the whole amount of the penalty thereof be recovered: In vacation, the appointment shall be made by commission under the hands and seals of a majority of the judges of the supreme court, and the person so appointed, shall execute bond with security, as above prescribed, and produce the same to any one of said judges, for his approbation; if he approve it, he shall endorse his approbation thereon, administer the proper oath of office, and endorse his certificate thereof also on the bond; and such judge shall cause the bond, with the endorsement thereon, to be recorded, and shall deposite the same in the office of the secretary of state, as aforesaid; which bond may be put in suit and prosecuted in the like manner, as is before directed in the case of a bond taken in open court: an authenticated copy of such bond shall be received in evidence in any court of law or equity in this state, in the same manner as the original would be, if it were present in court.

How removed from office.

SEC. 12. The clerks of said court shall hold their offices during good behaviour, but may be removed therefrom for neglect of duty, or misdemeanor in office, by the supreme court, on motion, of which the clerk against whom complaint is made, shall have twenty days previous notice, specifying the particular negligence or misdemeanor in office, with which he stands charged; and in every such case, the said court shall determine both the law and the fact.

Clerk may appoint deputy.

Office, where to be kept.

SEC. 13. The clerks of the said court, respectively, shall have power to appoint deputies with the approbation of the court, and they shall take the oath of office as above prescribed; and thereupon such deputies shall have power and authority to do and perform all the several acts and duties enjoined upon their principals; and the clerks of the court aforesaid, respectively, shall keep their offices, at the place in which such court shall be holden: but in all cases where offices shall not be provided for the clerks of the said court, the clerks, respectively, may keep the records and papers of the said court, at such places as the court shall think proper, and so enter of record.

Clerk *pro tem.* may be appointed.

SEC. 14. During a vacancy in the office of clerk of the supreme court, and during the unavoidable absence of the principal clerk, and his deputies, if he have any, the court, in term time, or a majority of the judges, in vacation, may appoint a clerk *pro tempore*, who after taking the necessary oath of office, shall be authorised to perform the duties of a clerk, and during his continuance in office, shall be entitled to all the fees thereof.

Papers, etc. to be delivered to successor.

SEC. 15. Whenever the office of the clerk of the supreme court shall become vacant by any cause whatsoever, the records, papers, books, stationery, and every thing belonging or appertaining to said office, shall be delivered over to the successor in office, by the person or persons having the same, whenever demanded; and it is hereby declared to be the duty of such successor to demand, receive and take the same into his care and safe keeping; and in case of refusal, or detention of any such records, papers, books, stationery, or other things appertaining to the office, of which he is appointed successor, after demand as aforesaid, he shall, moreover, give information thereof, to the attorney general, or district attorney, who shall prosecute such person or persons by action of debt, or information, in the name of the state, in any court of competent jurisdiction; and on conviction thereof, by the verdict of a jury, the person or persons so refusing or detaining as aforesaid, shall be fined in the sum of five thousand dollars, to the state, for the use and benefit of the literary fund.

Penalty for altering record, etc.

SEC. 16. If any clerk of the supreme court, shall, wittingly, make any false entry, or raze a letter, or change any record in his keeping, belonging to his office, every such clerk so offending, shall, on conviction thereof, be fined and imprisoned at the discretion of the court, and shall also be liable to the action of the party aggrieved.

Clerk to preserve transcripts and docket causes.

SEC. 17. The clerk of the said court shall carefully preserve the transcripts of records certified to his court, and all papers relative thereto; docketing all causes brought by appeal, writ of error, or otherwise, in the order he shall receive them, that they may be heard in the same course, unless the court for good cause shewn, direct any to be heard out of its turn; and shall faithfully record the proceedings and decisions of said court, and certify the same to the proper courts. And all causes shall be tried by the said supreme court, at the return term, unless satisfactory cause be shewn for a continuance.

Causes to be tried at the return term.

Clerk now in office.

SEC. 18. The clerk of the supreme court, now in office, shall be the clerk of said court.

Costs to be paid to the clerk.

SEC. 19. The clerk of every circuit court, superior court of chancery, and register of every orphans' court, in this state, shall receive and pay to the clerk of the supreme court, all costs which may have accrued in said court, in any cause or controversy, which may have been brought into the supreme court, from such circuit court, superior court of chancery or orphans' court, wherein a final judgment or decree shall be rendered or passed, and certified to the court below, to be carried into effect, by execution or otherwise, as the case may be; and any clerk or register failing to pay such costs, on demand, after he shall have received the same, may be proceeded against, by motion, in the supreme court, in the same manner, that sheriffs may be proceeded against, for money received on executions.

Judgment on the bond of the appellant or plaintiff in error.

SEC. 20. A certified copy of the bond required by law, to be given by the appellant or plaintiff in error, on all appeals, writs of error or *supersedeas*, shall be transmitted by the clerk of the court below, with the transcript of the record of the cause in which such appeal was taken, or writ of error or *supersedeas* granted, and in case the judgment or decree of the court below, shall be affirmed, or the appellant or plaintiff in error shall fail to prosecute the same to effect, the supreme court shall enter up judgment or decree against all the obligors in such bond, both principal and security, for the debt, damages and costs, which may be adjudged to the appellee or defendant in error; and it shall be the duty of the clerk of the court below, on the certificate of the clerk of the supreme court, to issue execution thereon, accordingly.

Questions of law adjourned to supreme court.

SEC. 21. On the adjournment of any question of law to the supreme court, if the point or question do not appear on the record, it shall be the duty of the judge of the court below to state the same in writing, and send it, with the other proceedings in the cause, to the supreme court, who shall hear and determine, and certify such determination on the same, to the court whence the question was adjourned; but no costs shall be incurred on any adjourned question.

Judges to give their opinion publicly.

SEC. 22. It shall be the duty of the judges of the supreme court, in all matters of law by them decided, each one to give his opinion publicly, with the reasons thereof, at the time they make known or pronounce their judgment, or determination on such matter of law.

Court may make rules.

SEC. 23. The supreme court shall have power, from time to time, to establish and promulgate rules of proceeding in said court, and also rules for bringing causes to issue, and for the orderly conducting, and arrangement of business in the several circuit courts of law, in this state: *Provided*, Such rules be not inconsistent with the constitution and laws of this state.

Sec. 24. It shall be the duty of the clerk below, at the time of issuing any writ of error or *supersedeas*, to issue a citation to the defendant in error, to appear and answer such writ at the next term of the supreme court, which shall be served on such defendant or his attorney of record, at least ten days before the term of the supreme court, to which the writ of error is returnable, and shall be sent up with a transcript of the record, and filed among the papers in the cause; and if such citation be not issued and served as aforesaid, the writ of error, or supersedeas shall be dismissed, unless the court shall be satisfied that such failure did not happen in consequence of the negligence or default of the plaintiff in error, his agent or attorney.

Citation to the defendant in error.

Sec. 25. All writs and processes issuing from the supreme court shall bear test of the presiding judge of such court, and shall be under the seal of said court, and signed by the clerk thereof, and may be directed to the sheriff or other proper officer of any county, in the state, and shall be by him executed according to the commands thereof, and returned to the court from which they emanated: And whenever such writ or process shall not be executed, the clerk of said court is hereby authorised and required to issue another like writ or process upon the application of the party suing out the former writ or process; and where any person, plaintiff or defendant, in any suit depending in the said court, shall be dead, it shall be lawful for the clerk of the said court, during the recess of the court, upon application, to issue proper process to enable the court to proceed to a final judgment or decree, in the names of the representatives of such deceased person.

Process.

On the death of either party.

Sec. 26. The said court may adjourn from day to day, or for such longer period as they may think necessary to the ends of justice, and the determination of the business before them; and there shall be no discontinuance of any suit, process, matter or thing, returned to, or depending in the supreme court, although a sufficient number of judges shall not attend at the commencement, or any other day of the term; but if a sufficient number shall fail to attend at the commencement of any term, or at any time during the term, any judge of the said court, or the sheriff attending the same, may adjourn the said court from day to day, for six days successively.

Adjournment of court.

Sec. 27. The judges of the supreme court shall choose, from among themselves, the presiding judge, and enter the same of record; and in case of his absence, or disqualification to sit in any cause, the senior judge present shall be the presiding judge for the time being; and no judge of said court shall sit in any cause, wherein he is directly or indirectly interested, or if he shall have been of counsel for either party in such cause.

Presiding judge.

Sec. 28. Although one or more of the judges of the supreme court be interested in the event of any suit, matter or thing de-

Decision of suits in which any of the

Judges are interested. pending therein, the same shall be finally decided by the other judges, if there be a number of judges not so interested, sufficient to constitute a court; and in case a majority of said judges shall be interested in any cause depending in said court, it shall be the duty of the general assembly, to appoint by joint resolution, one or more persons, learned in the law, to supply the places of the judges so interested, who shall hear and determine that particular cause, and no other.

When the court are equally divided. SEC. 29. Whenever the supreme court shall be equally divided in opinion, on hearing any appeal or writ of error, the judgment ~~or~~ decree of the court below, shall be affirmed.

Minutes to be read in open court. SEC. 30. For preventing error in entering up the judgments, decrees, orders and decisions of said court, the minutes of the proceedings of each day, shall be drawn up at large by the clerk, and read in open court the next day, (except those of the last day of each term, which shall be drawn up, read and corrected the same day,) and any necessary corrections made therein when they shall be signed by the presiding judge, and preserved among the records.

Inspection of clerk's office. SEC. 31. The supreme court shall annually appoint one of the judges thereof, to inspect the clerks' offices of said court, and to report to the next term of the supreme court, the condition in which he shall find the records and papers; which report shall be recorded.

Allowance for supplying the clerk's office. SEC. 32. The supreme court, shall make allowances to the clerks for all needful sums for supplying the offices with necessary books, and presses for the records, and for the safe keeping of the books and papers belonging to the offices; which allowances being certified to the auditor of public accounts, he shall give a warrant therefor on the treasury of the state.

Dismission of appeals, etc. SEC. 33. After the dismission of an appeal, writ of error or *supersedeas*, in the supreme court, no appeal, writ of error or *supersedeas* shall be allowed.

Sheriff's duty. SEC. 34. The sheriff of the county in which the supreme court shall be held, shall be an officer of said court, and shall attend the same with a sufficient number of deputies accordingly, and the sheriff and his deputies, shall be bound to perform the duties of sheriff, tipstaff and crier.

Court may punish for contempt. (*See Chap. 13 sec. 177.) SEC. 35. The supreme court shall have power to punish any person, who may be guilty of a contempt of such court, in like manner as if such contempt had been committed against a circuit court of law.*

Seal. SEC. 36. The executive of the state shall cause to be procured a seal for the use of the supreme court, for each district, with the style of the court around the margin, and an eagle in the centre; and the sum, necessary to procure such seals, shall be paid on the order of the executive, out of any money in the treasury not otherwise appropriated.

Court to appoint a reporter of decisions.

SEC. 37. It shall be the duty of the supreme court to appoint, from time to time, a suitable person to report all the decisions of that court, which may hereafter be had therein, and deemed useful, and the reporter so appointed shall cause the said reports to be printed and published, being first approved by a majority of the judges of said court, and receive the proceeds of the sales thereof, except such copies as are to be lodged in the office of the secretary of state, as hereinafter provided.

Copies of reports for the use of the state.

SEC. 38. It shall be the duty of the reporter as often as a volume of cases are printed, to deposite in the office of the secretary of state, for the use of the state, twenty-five copies of the cases reported, as soon as the same are printed; and it shall be the duty of the secretary of state to transmit one copy of said reports to the clerk of the supreme court, and one copy to each of the clerks of the superior court of chancery, and circuit courts of this state, for the use of said courts.

Compensation.

SEC. 39. For the copies so deposited in the office of secretary of state, the reporter shall be paid out of the treasury of the state, the sum of two dollars and fifty cents per page, for the number of pages contained in one copy, and no more, for which sum the auditor of public accounts shall issue his warrant on the treasury, on the certificate of the secretary of state, that such copies are deposited.

CHAPTER 16.

An act, directing the method of proceeding in courts of equity against absent debtors and other absent defendants, and for regulating the proceedings on attachments against absconding debtors.

Passed June 7, 1822.

Proceedings in equity when absent defendants have property in the state.

SEC. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi in general assembly convened*, That if, in any suit which hath been or hereafter shall be commenced, for relief in equity, in any superior court of chancery or in any other court, against any defendant or defendants, who are out of this state, and others, within the same, having in their hands effects of, or otherwise indebted to, such absent defendant or defendants, or against any such absent defendant or defendants having lands or tenements within the state, and the appearance of such absentees be not entered, and security given to the satisfaction of the court, for performing the decrees; upon affidavit, that such defendant or defendants, are out of the state, or that upon inquiry at his, her or their usual place of abode, he, she or they could not be found, so as to be served with process; in all such cases, such court may make any order, and require surety, if it shall appear necessary, to restrain the defendants in this state, from paying, conveying away, or secreting the debts by them owing to, or the effects in their hands, of such absent defendant or defendants, and for that purpose, may order such debts to be paid, and effects to be delivered, to the said plaintiff or plaintiffs, upon their giving sufficient security for the return thereof to such persons, and in such manner as the court shall direct.

Court to appoint a day for their appearance, &c.

Sec. 2. The court shall also appoint some day in the succeeding term, for the absent defendant or defendants, to enter his or their appearance to the suit, and give security for performing the decree; a copy of which order shall, by direction of the court, be forthwith published in any newspaper within this state, the circulation of which shall, in the opinion of the court, be best calculated to apprise the absent defendant or defendants, of the pendency of such suit, and continued for two months successively; and another copy thereof shall be posted at the front door of such court; or, such order of publication may be entered at rules held in the clerk's office of any superior court of chancery, subject to the control of the court, in the same manner that other proceedings at the rules are subject to such control. If such absent defendants shall not appear and give such security, within the time limited, or such further time as the court may allow for good cause shewn, the court may proceed to take such proof as the complainant shall offer; and, if they shall thereupon, be satisfied of the justness of the demand, they may order the bill to be taken as confessed, and make such order and decree therein as shall appear just, and may enforce due performance and execution thereof, by such ways and means, as have heretofore been used for enforcing other decrees, requiring the plaintiff or plaintiffs to give security, as the court shall approve, for abiding such future order as may be made, for restoring the estate or effects to the absent defendant or defendants, upon his or their appearance and answering the bill. And if the plaintiff or plaintiffs shall refuse to give, or not be able to procure such security, the effects shall remain under the direction of the court in the hands of a receiver, or otherwise, for so long a time as the court shall appoint, and shall then be finally disposed of in such manner, as to the court shall seem just.

Publication of the order.

Failure to appear.

Regulations in the sale of their real estate.

Sec. 3. No sale, however, of any lands or tenements belonging to any such defendant shall be decreed, for the satisfaction of any debt appearing to be due from him, unless the personal fund in the power of the court shall be insufficient for that purpose, nor shall any such sale be decreed, until such lands or tenements shall have been fairly valued by discreet commissioners, for that purpose appointed by the court, and acting upon oath, and the valuation so made shall have been returned into court; nor shall such sale be decreed, until the plaintiff, or some one for him, shall have filed in court, or in the clerk's office, bond with good security, in double the value of such lands or tenements, for performing the future orders and decrees of the court in that behalf.

Re-hearing of the cause on their appearance after decree is passed.

Sec. 4. If any person or persons, who shall be out of the state at the time any decree is pronounced as aforesaid, shall, within five years from the passing such decree, return and appear openly; or in case of his or her death, if his or her heir, executor or administrator, shall within the said five years, be and appear openly within this state, the plaintiff or plaintiffs, their executors or administrators, shall serve such person or persons, so returning or appearing, with a copy of the decree, within a reasonable time after such return or appearance shall be known to the plaintiff or plaintiffs; and thereupon, such defendant or defendants, or their representatives, may within twelve months after such service, or those defendants not served with a copy, or their representatives may within five years after the decree pronounced, appear in court, and petition to have the cause reheard; and upon their paying down, or giving security for payment of such costs, as the court shall think reasonable, they shall be admitted to answer the bill, and issue may be joined, and witnesses on both sides examined, and such other proceedings, decree and execution had, as may be just and right in the cause; but if the several defendants or their representatives, upon whom the decree shall be so served, shall not within twelve months after such service, and the other defendants or their representatives, upon whom no such service is made, shall not within five years from the time of the decree pronounced, appear and petition to have the cause re-heard as aforesaid, and pay, or secure to be paid, such costs as the court shall think reasonable, all and every decree, to be made in pursuance of this act, against any defendant or defendants so failing, shall stand absolutely confirmed against him, her or them, and at the end of such term, the court may make such further order for quieting the plaintiff or plaintiffs, in any such suits, in their possession and title to the estate and effects so sequestered or made liable, as to them shall seem reasonable.

Notice to absent defendants in equity.

Sec. 5. In all cases whatever, where a suit is or shall be depending in a superior court of chancery, or other court of equity, concerning any matter or thing whatever, against any absent defendant or defendants, the court may on satisfactory proof to them made, that such defendant or defendants is or are out of this state, or that upon inquiry at his, her or their usual place of abode, he, she or they could not be found, make any order similar to that which is directed to be made in case of absent debtors, adapting the same to the nature of the case; a copy of which order shall be published in like manner as is directed in case of absent debtors; and thereupon the proceedings in relation to such absent defendants, shall be in all respects the same, both before and after the decree, as are above prescribed in relation to absent debtors, so far as such proceedings against absent debtors shall be applicable to other absent defendants.

Attachments, by whom granted.

Oath required.

Service and return.

Garnishee to be summoned.

SEC. 6. If any creditor shall make complaint on oath or affirmation, to any judge of the supreme court, justice of the county court, or justice of the peace of any county within this state, that his or her debtor hath removed, or is removing out of the state, or so absconds or privately conceals him or herself, that the ordinary process of law cannot be served on such debtor, and if such creditor shall make oath or affirmation to the amount of his or her debt or demand, to the best of his or her knowledge and belief, such judge or justice shall grant an attachment against the estate of such debtor, or so much thereof as shall be sufficient to satisfy the debt or demand and costs; which attachment shall be directed to, and served by the sheriff, or other proper officer, of any county in this state, and made returnable to the next term of the court where the suit is properly cognizable, and shall be deemed the leading process in such suit; and it shall be lawful for such sheriff, or other proper officer, to serve and levy such attachment upon the slaves, goods and chattels, lands and tenements of the party so removed or removing, or absconding as aforesaid, wherever the same may be found, or in the hands of any person indebted to, or having any effects of the debtor, and to summon such person as a garnishee, to appear at the court to which the attachment is returnable, there to answer upon oath or affirmation, what he or she is indebted to the defendant in the attachment, or what effects of such defendant, he or she hath in his or her hands, or had at the time of the serving of such attachment, and what effects or debts of the defendant there are in the hands of any other person or persons, to his or her knowledge or belief; which attachment being returned executed, the court may thereupon compel such garnishee to appear and answer as aforesaid, who shall be allowed out of the effects attached, reasonable satisfaction for his or her attendance.

Oath may be made by the agent of a creditor absent from the state.

SEC. 7. If the creditor or plaintiff in the attachment be absent from, or shall reside out of this state, then the oath or affirmation, required in the preceding section, may be made by his or her agent or attorney, and the like proceedings shall be had thereon, as if such oath or affirmation had been made by the creditor or plaintiff in his or her own proper person.

Bond required.

SEC. 8. Every judge or justice, before granting any attachment as aforesaid, shall take bond and security from the party for whom the same shall be issued, his or her agent or attorney, payable to the defendant, in double the sum for which the complaint shall be made, conditioned for satisfying all costs which shall be awarded to such defendant, in case the plaintiff suing out the attachment therein mentioned, shall be cast in the suit;

and also all damages which shall be recovered against the plaintiff for wrongfully suing out such attachment; which bond, together with the affidavit of the party complaining, his or her agent or attorney, subscribed with his or her proper name, shall be returned by the judge or justice taking the same, to the court to which the attachment is returnable; and every attachment issued without bond and affidavit, taken and returned as aforesaid, is hereby declared illegal and void; and shall be dismissed.

Bond and affidavit to be returned.

SEC. 9. Every writ of attachment shall be executed in the following manner, that is to say: the officer to whom it is directed, shall go to the house or lands of the defendant, or to the person or house of the person in whose custody or possession the defendant's property and estate may be, and then and there declare, in the presence of one credible person at least, that he attaches the rights and credits, moneys and effects, goods and chattels, lands and tenements of such defendant, at the suit of the plaintiff in said writ mentioned; from and after which declaration, the goods, chattels and personal estate so attached, shall remain in the safe keeping and care of the said officer, in order to answer and abide the judgment of the court, unless the garnishee shall enter into bond to such officer, with two good and sufficient sureties, in double the sum for which such attachment shall have issued, with condition that the said goods, chattels, and personal estate, shall be forthcoming to answer the judgment of the court in said suit.

Manner of executing attachment.

SEC. 10. All attachments shall be repleviable, at any time before final judgment entered, or writ of inquiry executed, on the appearance of the defendant, and putting in good special bail, or by giving bond with good security to the sheriff or other officer serving the same; which bond, the sheriff or other officer is hereby empowered and required to take, to appear at the court, to which such attachments shall be returnable, and to abide by and perform the order and judgment of such court: and upon the defendant or defendants replevying any attached effects, by giving bond and security to the sheriff or other officer as aforesaid, the sheriff shall return the name of the security by him so taken; and if such security shall be adjudged insufficient by the court, and if the defendant shall fail to appear and give special bail as aforesaid, such sheriff and security shall be subject to the same judgment and recovery, and have the same liberty of defence and relief, as if such security had been taken upon the execution of mesne process.

When and how repleviable.

SEC. 11. When any person who shall be an inhabitant of any state, territory or country, without the limits of this state, so that he cannot be personally served with process, shall be indebted to any person, a resident of this state, and hath any estate, real or personal, within the same, any of the said judges or justices may grant an attachment against such estate of such

Attachments against the real estate of a non-resident.

foreign person, under the rules, restrictions and regulations before mentioned, and the like proceedings may be had thereon; and in case of the death of any debtor, residing out of the limits of this state, having estate, real or personal therein, the creditor resident within the state, shall, in like manner, be entitled to recover by attachment, against the executors and administrators, and execution shall issue accordingly against the property so left within this state.

Against the estate of non-residents jointly indebted.

SEC. 12. When two or more persons, not residing in this state are jointly indebted, either as joint obligors, partners, or otherwise, then the writ or writs of attachment shall and may be issued against the separate and joint estate of such joint debtors, or any of them, either by their proper names, or by or in the name or style of the partnership, or by whatever other name or names such joint debtors shall be generally reputed, known or distinguished within this state, or against the heirs, executors or administrators of them, or either or any of them: and the lands, tenements, goods, chattels and effects, rights and credits, of such debtors, or either or any of them, shall be liable to be seized and taken for the satisfaction of any just debt or other demand, and may be sold to satisfy the same.

Attachments for sums within the jurisdiction of a justice of the peace.

SEC. 13. If complaint be made on oath as aforesaid, to a justice of the peace of any county in this state, that any person is indebted to the complainant in a sum within the jurisdiction of such justice, and that such debtor hath removed, or is removing, out of the county wherein the debt was contracted, or so absconds or privately conçeals himself or herself, that a warrant cannot be served on him or her, such justice shall take bond and security, as in this act is before directed, grant an attachment against the estate of such debtor, or so much thereof, as shall be of value sufficient to satisfy the debt and costs of the party praying such attachment, directed to the sheriff, or any constable of his county, and returnable before himself, or any other justice of the peace thereof, who shall and may proceed thereupon as upon an at tachment returnable to any court of record.

Form of an attachment.

SEC. 14. And to prevent errors in issuing attachments and taking bonds thereupon: *Be it further enacted*, that the attachment shall be in the form, or to the effect following, viz:

"The state of Mississippi, to the sheriff (coroner or constable, as the case may be,) of —— county, greeting:

"Whereas, A. B. (or —— agent or attorney of A. B. as the case may be,) hath complained on oath (or affirmation) to —— esq. judge of the supreme court, (or justice of the county court of ——, county, or justice of the peace of the county of ——,) that C. D. is justly indebted to the said A. B. to the amount of —— or thereabouts, and oath having been also made, that the said C. D. hath removed, or is about to remove himself out of this state, (or out of your county as the case may be) or so absconds or conceals himself, that the ordinary process of law cannot be served upon him, (or, is an inhabitant of another state, territory or country, if the case be so,) and the said —— having given bond and security, according to the directions of the act in such case made and provided: *We therefore command you*, that you attach the estate, real and personal, of the said C. D. if to be found in your county, or so much thereof, as shall be of value sufficient to satisfy the said debt and costs, according to the complaint; and such estate so attached, in your hands to secure, or so to provide, that the same may be liable to further proceedings thereupon, according to law, at a —— court, to be held at —— for the county of —— upon the —— day of —— next; so as to compel the said C. D. to appear and answer the above complaint of the said ——; when and where you shall make known to the said court how you have executed this writ, and have then there this writ, witness, —— judge or justice, (as the case may be,) the —— day of —— in the year of our lord ——;" which attachment shall be signed and sealed by the judge or justice, granting the same, and the condition of the bond to be given on obtaining such attachment, shall be in the form, or to the effect following, viz:

To be signed and sealed.

"The condition of this obligation is such, that whereas the above bound —— hath the day of the date hereof prayed an attachment at the suit of ——, against the estate of the above named —— for the sum of ——; and hath obtained the same, returnable to the —— court of —— to be held at —— on the —— day of —— next; now if the said —— shall prosecute his said suit with effect, or in case he fail therein, shall well and truly pay and satisfy the said —— all such costs and damages as shall be awarded against the said —— his heirs, executors or administrators, in any suit or suits which may be hereafter brought for wrongfully suing out the said attachment; then the above obligation to be void, otherwise to remain in full force and effect." And no attachment shall be abated for want of form, if the essential matters expressed in the foregoing precedents be set forth.

Form of the condition of the bond.

Not to abate for want of form.

Sec. 15. In all suits commenced and prosecuted by attachment, against the estate of any person or persons residing out of this state, the court in which the same may be pending, shall stay all proceedings in such suit, for such time as it may think necessary, not less than six months, nor exceeding one year, from the return day of such attachment. And the court may order notice of the attachment, to be inserted in some public newspaper within the state or territory where the defendant is supposed to reside, specifying therein, at whose suit, against whose estate, for what sum, and from what court, such attachment issued, and that, unless the defendant shall appear, give special bail, and plead within the time limited for his or her appearance in such case, judgment will be entered, and the estate so attached, will be sold. And if the defendant appear, put in bail, and plead as aforesaid, his estate so attached, shall be liberated, and the garnishee or garnishees, if any, discharged.

Notice of the attachment to non-residents.

Notice to persons removing, etc.

SEC. 16. On the return of any writ of attachment, against a defendant who hath removed, or is removing without the limits of this state, or so absconds or privately conceals himself or herself, that the ordinary process of law cannot be served on him or her, (except in cases cognizable before a justice of the peace,) it shall be the duty of the clerk of the court in which the suit is pending, to give notice, for four weeks successively, in some newspaper published within this state, most convenient to the place where the court is held, of such attachment, and at whose suit, against whose estate, for what sum, and before what court the same is pending, and that unless the defendant shall appear, give special bail, and plead within the time limited for his or her appearance in such case, judgment will be entered, and the estate so attached will be sold. And if the defendant appear, put in bail, and plead as aforesaid, his estate so attached, shall be liberated, and the garnishee or garnishees, if any, discharged.

Proceedings, when other persons claim the property attached.

SEC. 17. In all cases of attachments, any person other than the defendant, claiming the property attached, may interplead without giving bail; but the property attached shall not thereby be replevied; and the court shall immediately, (unless good cause be shewn by either party for a continuance,) direct a jury to be empanneled to inquire into the right of property; and in all cases where the jury find for a claimant, such claimant shall be entitled to his costs; and where the jury find for the plaintiff in the attachment, such plaintiff shall recover his costs against such claimant.

Judgment and execution on attachments.

SEC. 18. If any attachment as aforesaid, returnable to any court of record, or before a justice of the peace, shall be returned *executed*, and the estate, real and personal attached shall not be replevied, or defence shall not be made as this act directs, the plaintiff shall be entitled to a judgment for his whole debt and costs, and may take execution thereupon; and all the estate, real and personal attached and not replevied as aforesaid, shall be sold and disposed of, for and towards satisfaction of the plaintiff's judgment, in the same manner as such property taken in execution upon a writ of *fieri facias*. And, where any attachment shall be returned served in the hands of any garnishee, it shall be lawful, upon his or her appearance and examination, in the manner by this act before directed, to enter up judgment and award execution against every such garnishee, for all sums of money due from him, her or them, to the defendant in the attachment, or in his, her or their custody or possession, for the use of such defendant, or so much thereof as shall be of value sufficient to satisfy the debt and costs of the complainant; and all goods and effects whatsoever, in the hands of any garnishee or garnishees, belonging to such defendant, shall be liable to satisfy such judgment, and shall be delivered to the sheriff or other officer accordingly.

Proceedings when garnishee fails to appear.

SEC. 19. Where any garnishee shall be returned by the sheriff or other officer summoned in manner aforesaid, and shall fail to appear and discover on oath or affirmation, as by this act is directed, it shall be lawful for the court, after solemnly calling the garnishee, and such court is hereby authorised and required, to enter a conditional judgment against such garnishee, and thereupon a *scire facias* shall issue against such garnishee, returnable to the next term of the court, to shew cause if any he have, why final judgment should not be entered against him. And upon such *scire facias* being duly executed and returned, if such garnishee shall fail to appear accordingly, and discover on oath or affirmation, in manner aforesaid, the court shall confirm such judgment, and award execution for the plaintiff's whole judgment and costs; and if upon the examination of any garnishee, it shall appear to the court, that there is any of the defendant's estate in the hands of any person or persons, who have not been summoned, such court shall, upon motion of the plaintiff, grant a judicial attachment to be levied in the hands of such person or persons having any of the estate of the defendant, in his, her or their custody or possession, who shall appear and answer, and be liable as other garnishees.

Estate in the hands of persons not summoned.

Attachments, before the debt is payable.

SEC. 20. Whenever any creditor shall have sufficient grounds to suspect that his debtor will remove with his effects out of this state, before his debt will be payable, or whenever such debtor shall have so removed, leaving effects, it shall be lawful for such creditor to go before any judge or justice of the county court, or justice of the peace of the county, where his debtor resides, or in case such debtor has removed, where he last resided, or where his effects may be found, and make oath or affirmation, to the true amount of his debt, and the time when it will be payable, and that he hath just cause to suspect, and verily believes, that such debtor will remove himself, with his effects, out of the state, before the said debt will become payable, or hath actually so removed; and also, that he had no knowledge, when the said debt was contracted, of the intention of such debtor so to remove; and thereupon such judge or justice, taking bond and security from such creditor, as in other cases of attachments shall issue an attachment against the goods and chattels of the debtor, returnable to the next term of the court having jurisdiction thereof; which attachment may be served on any goods and chattles of such debtor, or any garnishee or garnishees. If such debtor shall not, on or before the return of such attachment, enter into bond, with sufficient security, for the payment of the said debt, when it shall become payable, the court, on due proof of the justice thereof, and of the intention of the debtor to remove, or of his having actually removed out of this state, shall grant judgment, as in other cases of attachments; but execution shall be stayed against any garnishee, who shall state that he is indebted, or will at a future day be indebted to the defendant, until the claim of the plaintiff, or such garnishee's debt to the defendant shall become due, and the goods

Oath.

Judgment and execution thereon.

Sheriff selling the goods to take bond of purchaser.

condemned shall be sold upon a credit, until the time the plaintiff's claim shall be payable. The sheriff, or other officer selling such goods, shall take a bond or bonds, with good security from the purchaser or purchasers, and assign the same to the plaintiff, to the amount of his debt, interest and costs; which bond or bonds shall be returned to the clerk's office, and execution may issue thereon, as on a judgment of any court of record in this state; and where the property sold shall amount to more than the debt, interest and costs, shall take a bond, with good security for the surplus, and assign the same to the defendant: *Provided always*, That not more of the goods attached, shall be sold, than shall be necessary to satisfy the debt, interests and costs, except in cases where the property sold cannot be divided, and in such cases, the sheriff or other officer shall be entitled to commissions only on the amount of the plaintiff's demand, which commissions shall be included in the bond or bonds assigned to such plaintiff, who shall be liable therefor, as for commissions included in a forthcoming bond, taken by virtue of an execution: *Provided also*, That all such attachments shall be repleviable in the same manner as other attachments are by law repleviable, and, where any such debt shall be within the jurisdiction of a justice of the peace, an attachment may be obtained as aforesaid, returnable before any justice of the peace of the proper county, who shall and may grant judgment thereon, and direct the goods condemned by him, to be sold in manner aforesaid, or execution to be stayed as aforesaid, against any garnishee or garnishees.

Proceedings, when plaintiff shall allege that a garnishee has not discovered the true amount.

SEC. 21. Whenever the plaintiff in any attachment shall allege that any garnishee summoned in such attachment hath not discovered the true amount of debts due from him to the defendant or what goods and chattels belonging to the defendant are in his or her possession, the court shall direct, without the formality of pleading, a jury to be empanneled immediately, (unless good cause be shewn by either party for a continuance,) to inquire what is the true amount due from such garnishee to the defendant, and what goods and chattels are in his possession belonging to the defendant. If the finding of the jury shall be against such garnishee, the court shall grant judgment in the same manner as if the facts found by the jury, had been confessed by him or her, on his or her examination; and if the jury find in favor of the garnishee, he shall recover his costs against the plaintiff.

Attachment of perishable property.

SEC. 22. When any goods and chattels shall be levied on by virtue of any attachment, and the sheriff or other proper officer, in whose custody such goods and chattels are, shall be of opinion that the same are of a perishable nature, and in danger of immediate waste and decay, such sheriff, or other officer, as aforesaid, shall summon three respectable freeholders of his county, who shall examine the goods and chattels so levied on, and if the said freeholders shall, on oath or affirmation certify, that in their opinion, they are of a perishable nature, and in danger of immediate waste and decay, and if the person or persons to whom such goods and chattels belong, his, her or their agent or attorney, shall not within twenty days after serving such attachment, replevy the same, then such goods and chattels shall be sold at public vendue, by the sheriff, or other proper officer, he having first advertised such sale, at the court house, and other public places in his county, at least ten days before the sale. And the money arising from such sale, shall be liable to the judgment obtained upon such attachment, and deposited in the hands of the clerk of the court, to which the process shall be returnable, there to abide the event of such suit.

Slaves and live stock attached.

SEC. 23. When any sheriff, or other officer, shall serve an attachment on slaves, horses, or other live stock, and the same shall not be immediately replevied or restored to the debtor, it shall and may be lawful for such officers, and they are hereby required, to provide sufficient sustenance for the support of such slaves and live stock, until such slaves or stock shall be sold, or otherwise legally discharged from such attachment; and their compensation for the same shall be ascertained, regulated and paid in like manner, as in case of slaves and live stock taken in execution.

Jury for the trial of the right of property before a justice of the peace.

SEC. 24. In all attachments cognizable before a justice of the peace, served on any estate which may be claimed by any person other than the defendant, the justice of the peace, before whom the attachment is pending, shall direct a jury of good and lawful men to be summoned to appear before him, at a day and place specified in the summons; who shall be sworn and empanneled, to inquire into the right of property, in the same manner as is herein before provided in the like cases before a court of record, and the verdict of the jury shall be final between the claimant and the plaintiff in the attachment.

Judgment by default on attachment.

SEC. 25. If judgment, by default, shall be entered on any attachment, against the estate of the defendant, in any court of this state, no execution shall issue thereon, except against the goods and chattels, lands and tenements, on which the attachment may have been served, or against a garnishee or garnishees, who shall have money or other property, in his, or their hands, belonging to the defendant; but, if the defendant shall appear, put in bail, and plead to the suit, the verdict and judgment rendered therein, shall have the same force and effect, as if a *capias ad respondendum*, had been served on the person of the defendant.

After judgment against non-residents, plaintiff to give security before sale.

SEC. 26. After judgment obtained by the plaintiff, upon any attachment against non-residents, the plaintiff shall, before sales, and after execution is awarded, find security, who, shall undertake for the plaintiff, that if the defendant in the attachment, shall, within a year and a day next following, by himself or attorney, come into court and disprove or avoid the debt recovered by the plaintiff against him, or shall discharge the same with costs, that then the plaintiff shall restore to the defendant, the goods and chattels, lands and tenements, or the value thereof, by the plaintiff attached and condemned, or so much thereof as shall be disproved or discharged; or else they shall, and will do it for him.

Courts may compel the attendance of garnishee from one county to another.

SEC. 27. The respective courts, having jurisdiction of attachments, may summon, and compel the attendance of any garnishee, from one county to another: who shall, in all respects, be proceeded against in the same manner, as garnishees residing within the county where the attachment is returnable.

Death of defendant after return day of an attachment.

SEC. 28. If any defendant shall die, after the return day of the writ of attachment, the said action shall not be thereby abated or discontinued, but the same shall be carried on to judgment, sale, transfer and final determination, as if such death had not intervened, and the defendant had been alive; and all proceedings and deeds, which shall be had and made in such case, are hereby declared to be as valid and effectual in law, as if they were had and made in the life time of such defendant.

Attachment may issue on Sunday.

SEC. 29. Upon proof being made before any judge, justice of the county court, or justice of the peace, within this state, that a debtor is actually removing or absconding, as aforesaid, on Sunday, it shall be lawful to issue and serve an attachment against such debtor, as is directed by this act on any other day.

Constable may execute attachment.

SEC. 30. Any process of attachment against absconding debtors may be executed and returned by a constable, in the same manner, as by law, sheriffs are directed to execute and return the same.

Construction of this act.

SEC. 31. This act shall be construed in all courts of judicature, in the most liberal manner for the detection of fraud, the advancement of justice, and the benefit of creditors.

CHAPTER 17.

An act, for the better securing the payment of rents, and preventing the fraudulent practices of tenants, and to regulate the practice of suing out and prosecuting writs of replevin.

Passed June 10, 1822.

Attachments may issue requiring sheriff to distrain for rent.

SEC. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi in general assembly convened*, That if any lessor or lessors of lands and tenements, his, her or their agent or attorney, shall make complaint on oath before any justice of the county court or justice of the peace, of the county where the lands and tenements leased are situated, that his, her or their tenant is indebted to him or them for rent due and in arrear on such leased premises, specifying the sum so due and in arrear, it shall be lawful for such justice to grant an attachment* against the goods and chattels of such tenant, directed to the sheriff or other proper officer, commanding him to distrain the goods and chattels of such tenant, or so much thereof as shall be of value sufficient to satisfy the rent due and in arrear, to the lessor or lessors as aforesaid; and the goods and chattels so distrained shall be by such sheriff or proper officer, disposed of in the manner hereinafter directed.

(*See chap. 18.)

In what manner goods distrain'd may be replevied.

Sec. 2. Where any goods and chattels shall be distrained for any rent reserved, and due upon any demise, lease or contract whatsoever, and the tenant or owner of the goods so distrained, shall not, within ten days after such distress taken, and notice thereof, and the cause of such taking, left at the dwelling house or other most notorious place on the premises, charged with the rent distrained for, replevy the same, by sufficient security given to the sheriff or proper officer serving such distress, to pay the money, with lawful interest for the same, and all costs, at the end of three months; in such case, such sheriff or proper officer, shall and may sell the goods and chattels so distrained, by public auction, to the highest bidder, for money to be paid at the end of three months; and shall take bond of the purchaser or purchasers, with one or more sufficient securities, to pay the same accordingly, with interest, to the lessor or lessors for whom the distress was made.

May be sold if not replevied.

Tenor of bonds taken in pursuance of this act;

Sec. 3. Every bond so taken in pursuance of this act, shall mention that the same was entered into for goods or other estate distrained for rent, and restored to the debtor, or sold to the obligor, (as the case shall be,) and before the expiration of the said three months, shall be delivered to the lessor or lessors for whom distress was made. And if the money shall not be paid, according to the condition of such bond, it shall be lawful, and full power and authority are hereby given to the court having jurisdiction of the amount of such bond, where the same shall be lodged, upon motion of the party to whom the same is payable, to award execution thereupon, with costs: *Provided*, The obligors have ten days notice of such motion; and upon such execution, the sheriff or other proper officer shall not take any sureties for payment of the money at a further day, but shall levy the same immediately. And for the better direction of such sheriff or officer, the clerk shall endorse upon every such execution, that "*no security is to be taken.*"

Proceedings for the recovery of the money due thereon.

Officer entitled to commission in case the property is replevied.

Sec. 4. Any officer who shall levy distress for rent, shall be entitled, in case the property be replevied, to the same commission as in the case of a forthcoming bond, taken under any writ of execution for the like sum, and may include such commission in every bond taken under such distress.

Remedy in case of distress and sale when no rent is due.

SEC. 5. In case any distress and sale shall be made under color of this act, for rent pretended to be due and in arrear, where in truth no rent is due or in arrear, to him, her or them in whose name or names, or right, such distress shall be taken as aforesaid, then the owner of the goods and chattels so distrained and sold, his executors or administrators, shall have remedy by action of trespass, or upon the case, against the person or persons, in whose name or names, such distress shall have been taken as aforesaid, or either of them, his, her or their executors and administrators, and shall recover double the value of the goods and chattels so distrained and sold, together with full costs of suit.

Damages for pound breach or rescous.

SEC. 6. Upon any pound breach, or rescous, of goods or chattels, distrained for rent, the person or persons grieved thereby shall in a special action upon the case, for the wrong thereby sustained, recover treble damages with cost of suit, against the offender or offenders, in any such rescous or pound breach, or either of them, or against the owner of the goods distrained, in case the same be afterwards found to have come to his or her use or possession.

Where landlord suspects his tenant will remove his effects, attachment may issue

SEC. 7. Where any landlord or lessor shall have sufficient grounds to suspect, that his tenant will remove his effects from the leased premises, to any other place, whether within or without the county, before the expiration of his term, so as no distress for the said rent can be made, it shall be lawful for such landlord or lessor, to go before any justice of the county court, or justice of the peace of the county, where the lands and tenements leased do lie, and make oath what rent the tenant is to pay, and at what time the same will be due, and that he has just cause to suspect, and verily believes such tenant will remove his or her effects out of the county before the time of payment; and thereupon such justice may, and he is hereby empowered and required, to issue an attachment against the goods and chattels of such tenant, returnable to the next term of the court having cognizance thereof; and if such tenant shall not, at the time of serving such attachment, or before, or at the next term of such court as aforesaid, enter into recognizance, with one or more sufficient securities, for the payment of the said rent, at the time it shall become due, it shall be lawful for such court, and they are hereby required, to order the goods attached to be sold by the sheriff or other proper officer, for money, to be paid at the time the rent shall become due, the purchaser or purchasers giving good security for such payment, and to assign the bonds taken for the same and the costs, to such landlord or lessor; and the overplus of such sale, if any, besides the charges of attachment and sale, to return to the owner.

Also, when tenant has removed before rent was due.

SEC. 8. When any tenant shall have actually removed his effects from the leased premises, before the rent reserved thereon has become due, so that there be not left on such premises property liable to distress, sufficient to secure the payment of the rent so reserved, it shall be lawful for the landlord or lessor, in like manner to obtain an attachment, at any time within thirty days after such removal, and to levy the same on the effects of the tenant, wherever they may be found; and in other respects to proceed therein, in the manner, and under the regulations herein before prescribed.

Agent may obtain an attachment in the name of the landlord.

Sec. 9. The agent or attorney in fact of any landlord or lessor, shall have the same right to obtain and prosecute, in the name of such landlord or lessor, any attachment, upon taking the oath required by law, which the landlord or lessor would himself have under like circumstances.

Goods of persons other than tenant not liable to be distrained.

Sec. 10. No goods or chattels found or being in or upon any demised premises, such goods and chattels *bona fide* belonging to any person other than the tenant of such premises, or some other person or persons bound or liable for the payment of the arrears of rent, or of some portion thereof, due on such demised premises, shall be liable to be distrained for the payment of such arrears of rent: *Provided, however*, That if such tenant or other person, bound or liable for the payment of such arrears of rent, or of any portion thereof, shall have any limited property or interest in such goods and chattels, the same may be distrained and sold for such interest as such tenant or other person or persons, bound or liable for the payment of such arrears of rent, or of any portion thereof, may have therein: *Provided, also*, That no person claiming title to such property distrained for rent, shall in any manner, avail himself of the provisions of this section, unless by a writ of replevin sued out and levied before the sale of such property under the distress.

Constable may execute an attachment for rent.

Sec. 11. Any process of attachment against a tenant or tenants for rent, under any lease or other contract, may be executed and returned by a constable, in the same manner as by law sheriffs are directed to execute and return the same.

Goods fraudulently carried off the premises may be seized within thirty days.

Sec. 12. In case any lessee for life or lives, term of years, at will, or otherwise, of messuages, lands or tenements, upon the demise whereof any rents are or shall be reserved or made payable, shall, at any time, fraudulently or clandestinely, convey or carry off or from such demised premises, his goods or chattels, with intent to prevent the landlord or lessor from distraining the same for arrears of rent so reserved, it shall be lawful for such landlord or lessor, or any person or persons by him for that purpose lawfully empowered, within thirty days next after such conveying away, or carrying off such goods and chattels, to cause the same to be taken and seized according to the provisions of this act, wherever they shall be found, as a distress for the arrears of such rent, and the same to sell, in the same manner as if they had been distrained by such landlord or lessor in and upon the demised premises: *Provided, always*, That no goods or chattels so carried off, and *bona fide* sold for valuable

Proviso.

consideration, before such seizure made, shall be afterwards liable to be so taken or seized for any arrears of rent.

Rent arrear upon lease for life recoverable by action of debt.

SEC. 13. Any person or persons having rent in arrear, or due upon any lease or demise for life or lives, may bring an action or actions of debt for such arrears of rent, in the same manner, as if such rent was due and reserved upon a lease for years.

Rent arrear may be distrained for after the determination of the lease.

SEC. 14. It shall be lawful for any person or persons having rent in arrear, or due upon any lease for life or lives, or for years, or at will, ended or determined, to distrain for such arrears after the determination of the respective leases, in the same manner, as if such lease or leases had not been determined: *Provided*, That such distress be made within six months after the determination of such lease, and during the continuance of such landlord's title or interest, and during the possession of the tenant from whom such arrears became due. And no distress for rent shall be made in any case whatsoever, but within five years after such rent shall become due and in arrear.

Proviso.

Manner of granting writs of replevin.

SEC. 15. Before any writ of replevin shall be granted in case of goods and chattels distrained for rent, the person or persons praying such writ, shall enter into bond, with one or more sufficient securities, in the clerk's office, in the penalty of at least double the value of the rent distrained for, and costs of suit, to perform and satisfy the judgment of the court in such suit, in case he, she or they shall be cast therein; and if upon the trial of such suit, it shall be found that the rent distrained for, was justly due, the party injured, or delayed by suing forth the said writ, shall recover against the party suing forth and prosecuting the same, double the value of the rent in arrear and distrained for, with full costs of the suit; and upon any execution issued upon such judgment, the clerk shall in like manner endorse, that "*no security is to be taken.*"

If rent be found due, party delayed to recover double the value.

Person other than tenant claiming property distrained may sue out a writ of replevin.

SEC. 16. Where any person shall suggest that the goods and chattels distrained, are his or her property, and not the property of the tenant, nor held in trust for the use of the tenant in any manner whatsoever, and that the same in his or her opinion, are not liable to such distress, he or she giving bond and security in manner herein before directed, may sue out a writ of replevin for such goods and chattels, but not otherwise; and, in case the person or persons suing out such writ shall be cast in said suit, judgment shall be given against him for double the value of the rent in arrear and distrained for, with full costs as aforesaid.

Writs of replevin when to be returned &c.

SEC. 17. And for the more speedy determination of such writs of replevin: *Be it further enacted*, That every such writ issuing from the clerk's office of any court shall be returnable to the next court after the same shall be issued; and such court shall, at the term to which the same is returned, cause an issue to be made up therein; and every issue made up on such writ of replevin, whether in a superior or inferior court, shall be tried at the same term, without waiting for its turn in the order of priority, in regard to other suits.

Grantees of lands or the reversions to have the same right of entry for non-payment of rent &c as the original lessor.

SEC. 18. All persons being grantees, or assignees of any lands, tenements or hereditaments let to lease, or of the reversions thereof, from any person or persons, and the heirs, executors and administrators and assigns of such grantees or assignees, shall and may have and enjoy the like advantages against the lessees, their executors, administrators and assigns, by entry for non-payment of the rent, or for doing of waste, or other forfeitures; and also shall and may have and enjoy all and every such like covenants and agreements, contained and expressed in the said leases, demises or grants, against all the said lessees their executors, administrators and assigns, as the said lessors themselves, or their heirs ought, should, or might have had, or enjoyed at any time or times.

Lessees of lands to have the same actions and advantages of covenants &c. against the grantees of reversions as against original lessors.

SEC. 19. All lessees of any lands, tenements and hereditaments, for a term of years, life or lives, their executors, administrators or assigns, shall and may have like action and advantage against all and every person or persons, their heirs and assigns, which have, or shall have any gift or grant of the reversion of the said lands, tenements or hereditaments, so letten, or any parcel thereof, for any condition, covenant or agreement contained or expressed in the indentures of their lease and leases, as the same lessees, or any of them, might and should have had against the said lessors and their heirs, all benefit and advantage of recoveries in value, by reason of any warranty in deed or law, only excepted.

Executors &c. may maintain debt against a tenant or his executors for rent due to their testator or may distrain during the tenants seizen or possession.

SEC. 20. The executors and administrators of any person unto whom any rent is or shall be due, and not paid at the time of his death, shall and may have an action of debt for all such arrearages against the tenant or tenants who ought to have paid the said rent, so being behind in the life of their testator or intestate, or against the executors or administrators of such tenants; and also, furthermore, it shall and may be lawful for every such executor and administrator of any such person, to whom such rent is or shall be due, and not paid at the time of his death, to distrain for the arrearages of all such rents on the lands, tenements and hereditaments, which were charged with the payment of such rents, and chargeable to the distress of the said testator or intestate, so long as the same continue, remain, and be in the seizen or possession of the said tenant in demesne, who ought immediately to have paid the said rent, so being behind, to the said testator or intestate in his life time, or in the seizen or possession of any person or persons claiming the said lands, tenements and hereditaments, only by and from the said tenant by purchase, gift, or descent, in like manner and form as their said testator or intestate might or ought to have done in his life time; and the said executors and administrators for the same distress, lawfully may make avowry upon the matter aforesaid.

Husband having a fee simple or estate for life in right of his wife may, after her death, maintatn debt or distrain for rent accruing during her life.

SEC. 21. If any man who now hath, or hereafter shall have in the right of his wife, any estate in fee simple, or for term of life, of or in any rents, or fee farms and the same rents or fee farms now are, or hereafter shall be due, behind and unpaid in the said wife's life, then the said husband, after the death of his said wife, his executors and administrators, shall have an action of debt for the said arrearages against the tenant of the demesne who ought to have paid the same, his executors or administrators; and also, the said husband, after the death of his said wife, may distrain for the said arrearages in like manner and form, as he might have done if his said wife had been then living, and make avowry upon his matter as is aforesaid.

Executors &c. may maintain debt or distrain for rent due to their testators altho' tenant's estate be determined.

SEC. 22. The executors and administrators of any person or persons having rent in arrear, or due upon any demise or lease for life or lives, or for years, or at will, although the same be determined, shall and may have the like remedy, by action of debt, or by distress, against the person who ought to have paid the same, his or her executors or administrators, as the testator or intestate if living, might or could have done.

Property distrained not to be removed out of the county.

SEC. 23. It shall not be lawful for any person taking any distress to drive or remove the same out of the county where such distress was taken, and if any person shall so remove any goods and chattels, distrained as aforesaid, such person shall on conviction, be fined at the discretion of the court before whom the conviction may be had, and shall, moreover, be liable to the action of the party aggrieved, for all damages occasioned thereby; and moreover, distresses shall in all cases be reasonable, and not too great; and any person who shall make an unreasonable distress, under color of this act, shall be liable to the action of the party grieved, for damages.

Distresses to be reasonable.

CHAPTER 18.

An act, to amend an act entitled, "an act, for the better securing the payment of rents, and preventing the fraudulent practices of tenants, and to regulate the mode of suing out writs of replevin."

Passed January 20, 1823.

Lessor to give bond on suing out an attachment for rent.

SEC. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi, in general assembly convened,* That if any lessor or lessors of lands or tenements, shall wish to sue out an attachment, against his, her or their tenant or tenants, for any rent due, or in arrear, on leased premises, such lessor or lessors, shall give bond and security, as is required by law in other cases of attachment.

CHAPTER 19.

An act, to reduce into one the several acts concerning escheats.

Passed June 13, 1822.

Sec. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi in general assembly convened,* That if any person who, at the time of his or her death, was seized or possessed of any real or personal estate within this state, die intestate, leaving no heir capable of inheriting the same, such estate shall escheat to this state for the use and benefit of the literary fund, subject to all legal or equitable demands on the same.

In what case property shall escheat to the state.

Sec. 2. The governor for the time being shall be, and he is hereby authorised and required, to appoint a person of integrity and ability, to be escheator-general for the state, who shall hold his office for the term of five years, unless sooner removed in the manner hereinafter provided, and who shall have power to appoint a deputy in each county, for whom he shall be accountable, who shall hold their appointments during the pleasure of the said escheator-general; and so often as information shall be given to the escheator-general, or the deputy escheator of the proper county, of any person dying intestate, who, at the time of his or her death, was seized or possessed of any real or personal estate, and leaving no person capable of inheriting the same, the said escheator-general shall file with the clerk of the supreme court, a statement in writing, setting forth the substance of the information so received, who shall forthwith issue his precept directed to the sheriff or coroner of the proper county, thereby commanding such sheriff or coroner to summon twenty-four good and lawful men of said county to be and appear before the escheator-general or his deputy, at the courthouse of such county, not less than twenty nor more than thirty days thereafter, from whom a jury of twelve shall be drawn by lot, who shall be sworn and empanneled by said sheriff or coroner, well and truly to inquire into, and true inquest make of the matters which may be submitted to them, touching the estate, both real and personal, of the person dying intestate, and whether he or she left any person who might lawfully inherit the same, which said precept shall be in the form and to the effect following:

Escheator general to be appointed.

He may appoint deputies.

Duty, when a person dies intestate leaving no heir to inherit the estate of which he was possessed;

Jury to be empanneled to make inquest as to the estate.

"*The state of Mississippi—to the sheriff (or corner) of ——— county, greeting:—*

"Whereas, we are informed that A B died seized or posessed of divers lands, tenements, hereditaments and personal estate, in the county of ———, without making any devise thereof, and leaving no heir capable of inheriting the same,—*We command you* to summon twenty-four good and lawful men of your county, to appear at the court house thereof, on the ——— day of ——— before ——— escheator-general, or his deputy for said county, twelve of whom shall be sworn and empanneled according to law, diligently to inquire what lands, tenements and hereditaments, and personal estate, the said A B was seized or possessed of at the time of his death, of any, and what estate of inheritance, and when he died, and whether he made any and what devise thereof, and whether he left any heir, if he did, who is his heir, and what is the clear yearly value of such lands, tenements and hereditaments; and what the value of the personal estate, as nearly as may be, and the inquisition which you shall take thereof, do you send under your seal, and the seals of those by whose oath you take the same inquisition, before us in our supreme court, without delay, together with this writ."

Manner of taking the inquest.

SEC. 3. It shall be the duty of the escheator-general, or deputy escheator of the proper county, to preside on every inquest to be taken as aforesaid, and to receive the testimony of all competent witnesses, both on the part of the state or of any person claiming the property, real or personal, alleged to be liable to escheat, who shall be duly sworn, or affirmed, to give evidence to the jury concerning the matter set forth in the precept; which oath or affirmation the sheriff or coroner is hereby authorised and required to administer; and upon the finding of the inquisition, the same shall be certified by the said escheator-general or his deputy, and delivered to the sheriff or coroner, who shall transmit the same within thirty days thereafter, to the clerk of the supreme court, to be by him recorded in a book to be kept for that purpose.

Escheator may adjourn from day to day until the inquest is finished.

SEC. 4. When a jury of inquisition for escheat shall be convened, and shall not be able to complete the same in one day, the escheator general or deputy escheator, shall have power to adjourn the proceedings from day to day, until the same be tried and finished; and any juror failing to attend the inquest according to the first summons, or according to the adjournment, shall be returned by the sheriff or coroner to the next circuit court of law for the county where the inquest shall be holden, and shall be fined by said court in any sum not exceeding fifty dollars.

Jurors failing to attend

Compensation of jurors and witnesses.

SEC. 5. Jurors and witnesses in every case of escheat, shall be entitled to the like compensation as is authorised by law for attending in cases commenced in any circuit court of law in this stete; and it shall be the duty of the auditor of public accounts, on the certificate of the escheator-general or his deputy, of the attendance of such jurors and witnesses, on behalf of the state, to draw his warrant on the treasurer of the state, for the amount of such compensation.

Escheator to ascertain what estate has escheated for defect of legal heirs.

SEC. 6. It shall be the duty of the escheator-general and his deputies, to ascertain by all practicable means, what estate, both real and personal, in any county in this state, shall have escheated for defect of legal heirs; and the assessor and collector of taxes in each county, shall on the first Monday of January annually, furnish to the escheator-general or his deputy, a list of all lands within their respective counties, of which any person hath died seized of an estate of inheritance, intestate, and without any heir known to such assessor and collector, or to which no person is entitled within his knowledge; and any assessor and collector who shall fail or neglect to furnish such list, shall, on conviction thereof in any court of competent jurisdiction, be fined in a sum not less than fifty nor more than one hundred dollars, one half thereof to the informer; and the other half to the state, for the use and benefit of the literary fund.

Assessor and collector's duty

SEC. 7. Upon the return of any inquisition, taken in manner and form as by this act directed, the escheator-general shall cause to be issued from the office of the clerk of the supreme court, a writ directed to the sheriff or coroner of the county, where the personal estate, if any, may be found, commanding him to seize, attach and secure such personal estate so escheated as aforesaid; in whose hands soever the same may be; or, if the said personal estate be eloigned, then to seize, attach and secure, so much of the personal estate of the person or persons who shall have eloigned the same, as shall be equal in value to the personal estate so eloigned, unless the person or persons in whose hands or possession such personal estate be found, give bond to the governor of the state for the time being, and his successors in office, with sufficient security, to appear at the next supreme court thereafter, to traverse the said inquisition; and also, in case the same be confirmed, to render to the state the personal estate found to be in his or her hands; which writ so to be issued shall be duly returned to the supreme court, together with an inventory and appraisment of the personal estate, if any, which be seized and attached by virtue thereof, and the said sheriff or coroner, shall thereupon sell the same at public auction to the highest bidder, after ten days' public notice of such sale, and shall, without delay, pay over the moneys arising from such sale to the treasurer of the state, for the use and benefit of the literary fund: and the sheriff or coroner shall be liable for the moneys received, in the same manner, and subject to the same remedies, as if the money was collected on execution.

Manner of attaching and securing personal estate escheated.

When the personal estate is eloigned.

Sale of the personal estate attached.

SEC. 8. Where lands, tenements and hereditaments, shall be found to have escheated to the state, the escheator-general shall lease the same for any term not exceeding two years, to the person or persons, who at the time of finding the inquisition concerning the same, shall be in possession thereof, provided he give a reasonable rent therefor; and if the person or persons so in possession claim title thereto, he, she or they shall give bond as aforesaid, to prosecute his, her or their claim in the manner herein directed, and also to pay to the state a reasonable rent for the annual profits of the same lands, tenements and hereditaments, in case the judgment of the court shall establish the title of the state; and in case such tenant or tenants in possession, will not accept of a lease as aforesaid, and give such bond as a-

Real estate escheated, to be leased for a term not exceeding two years.

Proceeding when person in possession claims title thereto.

foresaid, the escheator-general shall lease the same lands, tenements and hereditaments, during the term aforesaid, to some other tenant or tenants of sufficient ability; and shall cause a writ, in the nature of an *habere facias possessionem*, to be issued by the clerk of the supreme court, directed to the sheriff or coroner of the county, as the case may require, commanding such officer to remove the tenant or tenants off the premises, out of possession, and to deliver possession thereof to such lessee or lessees.

Manner of traversing inquest when found against the state.

SEC. 9. At the next term of the supreme court after any inquisition of escheat, if the inquest shall be against the state, it shall be the duty of the attorney-general, at the instance of the escheator-general, or his deputy, to cause citations to issue to the persons interested, if in the state; or if not then to cause publications to be made in some newspaper in the state for four weeks successively, citing the said persons interested to appear at the next term of said court to shew cause, if any he, she, or they have, why the said inquest should not be traversed on the part of the state: *Provided*, That there shall be at least four months between the date of the first publication, and the time such persons are required therein to attend to shew cause as aforesaid; and no sufficient cause appearing to the contrary, the said attorney-general shall be admitted by the said court to traverse the inquisition on the part of the state; and thereupon, the said supreme court shall direct an issue to be made up, and tried in the circuit court for the county in which such inquisition was found, and all the evidence on the part of the state and against it, shall be heard *de novo*, before a jury empanneled and sworn, under the direction of the court as in other cases; and if the said traverse or issue shall be found or discussed against the state, then the state shall be forever barred and foreclosed from claiming the property mentioned in said inquisition, for the same cause of escheat.

State barred if the traverse be found against the state.

Manner of traversing inquest when found in favor of the state.

SEC. 10. If the inquest found and returned as before provided, shall be in favor of the state, and shall find the title by escheat accordingly, then it shall be lawful for any person or persons interested in the property real or personal, mentioned in the inquisition, to appear at the next succeeding term of the supreme court, and traverse the same, by alleging the title to the estate in the inquest mentioned to be out of the state, and in himself or others who are entitled to the same; and thereupon, the said supreme court shall direct an issue to be made up between the party so traversing the said inquest of office and the state, and the same shall be tried in the circuit court of the county where such inquisition was found, by a jury, under the direction of the court as in other cases; and if upon the said traverse and issue, it be found for the state, then the claimant shall be forever barred of his claim, and judgment shall be entered for the state, that the said property, real or personal, has duly escheated to the state according to law; and if the said issue is found against

Claimant barred if the traverse be found for the state.

the state, then the claim of the state to such property shall be forever barred, for the same cause of escheat.

Time and manner of selling real estate escheated.

SEC. 11. Upon such inquisition found for the state, and returned as aforesaid, if no person shall appear within two years from the date of the same, and claim to traverse such inquest; or, if upon claim, the title of the state be established to any lands, tenements or hereditaments, found to be escheated as aforesaid, then the clerk of the supreme court shall certify to the escheator-general, that no claim had been made, and if such claim had been made, that judgment thereupon had been rendered against the same; whereupon, and on the production of such certificate, by the said escheator-general or his deputy, the lands, tenements and hereditaments, mentioned in said inquest, shall be sold by the sheriff or coroner of the proper county, to the highest bidder, thirty days previous notice being given of the time and place of sale, in one or more public newspapers of the state, and at three or more public places in the county, under the direction of the escheator-general or his deputy; and the money arising from such sale, shall be forthwith paid by the sheriff or coroner, to the treasurer of the state, for the use and benefit of the literary fund; and the sheriff or coroner shall be liable, in case of default in payment as aforesaid, in the same manner as if the money was collected on execution.

Escheator general to give bond.

SEC. 12. The escheator-general shall, within twenty days after his appointment, give bond, with one or more good and sufficient securities, to be approved by the supreme court, or any judge thereof in vacation, to the governor of the state for the time being, and his successors in office, in the penal sum of five thousand dollars, conditioned for the faithful performance of the duties enjoined on him by this act; which bond shall be deposited in the clerk's office of the said court; and said escheator-general or his deputies, shall be liable for any moneys received for the lease of real estate, in the same manner, and subject to the like remedies as sheriffs or coroners are, for moneys received by them under this act; and on the application of any person or persons to the supreme court, charging the said escheator-general with any misdemeanor in office, the said court shall order a citation to issue, specifying the charge or charges alleged against the said escheator-general, and requiring him to appear and answer the same, on the day therein specified; and if on a full and fair investigation, the said escheator-general shall be found guilty by said court, of the misdemeanor with which he is charged, or, if he shall fail to appear and contest the same, the said supreme court shall certify the proceedings had thereon to the governor, who shall thereupon remove the said escheator-general from office; and he shall morever, be liable to the action of any person or persons, or body corporate, who may have sustained any damage by reason of his default.

How proceeded against for misdemeanor in office.

Upon the sale of real estate governor to issue a patent.

Sec. 13. Upon the sale of real estate by the sheriff as before directed, he shall certify his proceedings into the office of the secretary of state, and the governor shall thereupon, issue a patent to the purchaser, under the great seal of the state, which shall only convey to the said purchaser, the right of the person dying intestate, seized, possessed, or having title to the same; saving however, the rights of other persons claiming the land, by title derived from the intestate, before his death, or those claiming by other paramount titles, if any such shall be exhibited and established, according to the provisions and limitations of this act.

Right thereby conveyed.

Time limited for establishing a right to real and personal estate after sale.

Sec. 14. If any person shall within twelve years next after the sale of any lands, tenements and hereditaments, as herein before directed, appear and make claim thereto in manner aforesaid, and establish his, her, or their title to the same; in such case, and not otherwise, such person shall, on the production of the record of such recovery to the auditor of public accounts, be entitled to a warrant on the treasurer of the state, for all such moneys as the state shall have received on the sale of such lands, tenements and hereditaments, without interest, and after all charges thereon be deducted; which moneys so refunded shall be chargeable on the literary fund; and if any person, within six years next after the sale of such personal estate as aforesaid, shall make his or her claim, in manner herein before directed, and establish his or her right thereto, he or she shall in like manner as in the case of real estate, by warrant from the auditor of public accounts, receive all such moneys as had been received by the state, for the use and benefit of the literary fund for the same personal estate, without interest, after all charges thereon being deducted.

Money to be refunded if the right be established.

Claimants after what time barred.

Sec. 15. If no person shall appear and traverse said office of inquest, within twelve years from the date of said inquest, in the case of real estate, or within six years from the date thereof, in the case of personal estate; then and in that case, all persons claiming by descent or otherwise, the estate real or personal in such inquest mentioned, shall be for ever barred of his, her, or their claim, saving however, to infants, *femes covert*, persons *non compos mentis*, or imprisoned, the like term of years after their respective disabilities are removed.

When estate shall be sold for cash and the amount be not paid on the day of sale, escheator general to direct a new sale.

Sec. 16. Where any sale of real or personal estate shall be made, as herein before directed, for cash, if the purchaser or purchasers do not pay to the sheriff or coroner, as the case may be, the whole sum of money by him, her or them, agreed to be given for the estate real or personal so purchased, on the day of the sale thereof, the state shall not be bound by the contract; but it shall be the duty of the escheator-general to direct a new sale of such estate immediately after such default, in the same manner in all respects, as if no sale had been previously made; and the said escheator-general shall have power in case he may deem it of advantage to the state to order the sale of any estate real or personal, which shall be found to have escheated to the state, on a credit not exceeding in the whole, twelve months from the day of the sale thereof and to take from the purchaser or purchasers, bond with security, to be approved by the sheriff of the county where such estate shall be sold, for the payment of the purchase money, with interest; and in case of the sale of real estate on a credit, as aforesaid, no patent shall issue for the land so sold, until the whole of the purchase money, shall have been paid; and in case of failure to pay the same on the day it shall become due, the land shall revert to the state, and be again exposed to sale, in the manner provided for by this act.

He may order estate to be sold on a credit not exceeding twelve months.

Sec. 17. If any person at the time of the death of any intestate, as aforesaid, shall be indebted to such intestate, or if any part of the estate, real or personal, which was of such intestate, and not mentioned and included in such inquisition, be in the hands or possession of any person within this state, the same shall be recovered by the state, to and for the use and benefit of the literary fund, by action of debt or upon the case, for money had and received for the use of the state, or by action of trover, or such other form of action as the nature of the case may require, in which proceedings, respectively, the inquisition touching the estate of such intestate shall be admissible evidence, to prove that the same intestate died leaving no heir capable of inheriting such real or personal estate.

Debts and estate not included in the inquisition how recoverable.

Sec. 18. The clerks of the supreme and circuit courts of the state shall be entitled to the same fees for services rendered under this act, that they are respectively entitled to receive for the like services rendered in an ordinary suit at law; and the sheriff for summoning and empanneling said jury, and taking the said inquisition and returning the same, shall be entitled to the sum of ten dollars and no more; and for all other services rendered under this act, he shall receive the same fees and compensation as for the like services in other cases, as regulated by law.

Clerks and sheriff's fees for services rendered under this act.

Sec. 19. All subpœnas for witnesses to appear and give evidence before a jury empanneled to take the inquisition on the estate of an intestate as aforesaid, shall be issued by the clerk of the supreme court directed to the sheriff of the proper county, and on a traverse of such inquisition, in any circuit court, the clerk of such court shall issue the necessary process to compel the attendance of witnesses; and the escheator-general or his deputy, shall be allowed the sum of twenty dollars for each inquest by him taken, and a commission of ten per cent. on all sums of money which he shall receive and pay into the public treasury, and five per cent. on all sales made according to the provisions of this act.

Subpœnas for witnesses.

Compensation of escheator gen eral etc.

Remedy by petition of right and *monstrans de droit* abolished.

Sec. 20. The remedy by petition of right and *monstrans de droit* shall be, and the same is hereby abolished, and the inquest found as aforesaid, may be traversed according to the provisions of this act, and not otherwise.

CHAPTER 20.

An act, concerning arbitrations and awards.

Passed June 7, 1822.

Parties to suits depending, may consent to a rule of court for arbitration of the matters in controversy between them.

Sec. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi, in general assembly convened,* That in all suits or actions, depending, or which hereafter may be depending, in any court in this state, either at common law, or in chancery, it shall and may be lawful for the plaintiff and defendant, by themselves, their agents or attorneys, to consent to a rule of court, for referring all matters in controversy, between them, in any such suit or action, to the award, arbitrament or umpirage of any person or persons, who may be mutually chosen by them; and the award of such referee or refrees being made, and returned, according to the rule or submission of the parties, approved by the court, and entered of record, shall have the same effect as the final judgment or decree of the court into which such award may be returned, and execution may issue thereon accordingly.

A submission to arbitration may be made a rule of any court of record.

Sec. 2. It shall any may be lawful for all merchants, and traders, and others desiring to end any controversy, for which there is no other remedy but by personal action, or suit in equity, by arbitration, to agree that their submission of the matter in controversy, to the award or umpirage of any person or persons, should be made a rule of any court of record which the parties shall choose, and to insert such their agreement in their submission or the condition of the bond or promise, whereby they oblige themselves, respectively, to submit to the award or umpirage of any person or persons; which agreement being so made and inserted in their submission or promise, or condition of their respective bonds, shall or may, upon producing an affidavit thereof, made by the witnesses thereunto, or any one of them, in the court of which the same is agreed to be made a rule, and reading and filing the said affidavit in court, be entered in the proceedings of such court; and a rule shall be made thereupon by the said court, that the parties shall submit to and finally be concluded by the arbitration or umpirage, which shall be made concerning them by the arbitrators or umpire pursuant to such submission.

Award to be entered as the judgment of such court and execution issued thereon.

Sec. 3. The award made in pursuance of such submission may be entered up as the judgment or decree of the court, and the same execution or process may issue thereupon as on other judgments or decrees: and the court shall not invalidate any award, arbitrament or umpirage made in pursuance of this act, unless it be made appear to such court, that such award, arbitrament or umpirage was procured by corruption or other undue means, or that there was evident partiality or misbehaviour in the arbitrators or umpires, or any of them. And any award, arbitrament or umpirage procured by corruption or other undue means, or where there shall have been such evident partiarity or misbehaviour as aforesaid, shall be deemed and judged void and of no effect, and accordingly set aside by the court in which the submission shall be made, so as complaint of such corruption or undue means, or evident partiality or misbehaviour as aforesaid, be made before the end of the term of the court next after such award, arbitrament or umpirage be made and returned to such court.

Power of courts of equity over awards not taken away.

Sec. 4. Nothing in this act contained shall be construed to take away from courts of equity their power over awards, arbitraments or umpirages.

CHAPTER 21.

An act, for the limitation of actions, and certain proceedings in civil cases; and for preventing frivolous and vexatious suits.

Passed June 7, 1822.

Limitation of real and mixed actions.

Sec. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi, in general assembly convened,* That from and after the passing of this act, every real, possessory, ancestral, mixed or other action, for any lands, tenements or hereditaments, shall be brought and instituted within twenty years next after the right or title thereto, or cause of such action accrued, and not after: *Provided,* That the time during which the person who hath, or shall have such right or title, or cause of action, shall have been under the age of twenty-one years *feme covert,* or insane, shall not be taken or computed as part of the said limited period: *Provided, also,* That nothing in this act shall be so construed, as in any wise to affect or interfere with the primary disposal of the lands of the United States within this state.

Right of entry into lands etc.

Sec. 2. No person who now hath, or hereafter may have, any right or title of entry into any lands, tenements, or hereditaments, shall make any entry therein, but within twenty years next after such right or title shall have accrued, and such person shall be barred from any entry afterwards: *Provided, always,* That the time during which the person who hath, or shall have such right or title of entry, shall have been under the age of twenty-one years, *feme covert,* or insane, shall not be taken or computed as part of the said limited period of twenty years.

Fifty years actual possession of real estate to vest full title in the possessor.

SEC. 3. Fifty years actual possession of any lands, tenements, or other real estate, uninterruptedly continued by occupancy, descent, conveyance or otherwise, in whatever way or manner such possession might have commenced or have been continued, shall vest a full and complete right and title in every actual possessor or occupier of such lands, tenements or other real estate, and shall be a good and sufficient bar to all claims that may be made, or actions commenced by any person or persons whatever, for the recovery of any such lands, tenements, or other real estate.

Limitation in actions of trespass, detinue, trover, replevin debt, account etc.

SEC. 4. All actions of trespass *quare clausum fregit*, all actions of trespass, detinue, trover and replevin, for taking away goods and chattels, all actions of debt founded upon any lending or contract, without specialty, or for arrearages of rent due on a parol demise, and all actions of account and upon the case, except actions for slander, and except also such actions as concern the trade or merchandize between merchant and merchant, their factors, agents and servants, shall be commenced and sued within six years next after the cause of such actions shall have accrued, and not after.

Trespass for assault, menace, battery, etc.

SEC. 5. All actions of trespass for assault, menace, battery, wounding, and imprisonment, or any of them, shall be commenced and sued within two years next after the cause of such actions shall have accrued, and not after.

Actions on the case for words.

SEC. 6. Every action upon the case for words, shall be commenced and sued within one year next after the words spoken, and not after.

Provisions as to minors, *femes covert* and insane persons.

SEC. 7. If any person or persons, who is, are, or shall be entitled to any of the actions specified in the three preceding sections of this act, is, are, or shall be, at the time of any such cause of action accruing within the age of twenty-one years, *feme-covert*, or insane, then such person or persons shall be at liberty to bring such action, so as he, she, or they institute or take the same within such time as is before limited, after his, her, or their, coming to or being of full age, discovert, or of sane memory, as by other person or persons, having no such impediment, might be done.

Debt, for rent founded on a lease under seal, and debt on a bill, obligation or award for the payment of money.

SEC. 8. Every action of debt, or covenant for rent or arrearages of rent, founded upon any lease under seal, and every action of debt, upon any single or penal bill, for the payment of money only, or upon any obligation with condition for the payment of money only, or upon any award under the hands and seals of arbitrators, for the payment of money only, shall be commenced and sued within sixteen years next after the cause of such action shall have accrued, and not after; but if any payment shall have been made on any such lease, specialty, or award, within or after the said period of sixteen years, then an action instituted on such lease, specialty or award within sixteen years after such payment, shall be good and effectual in law, and not after: *Provided always*, That the time during which the person who is or shall be entitled to any of the actions specified in this section, shall have been within the age of twenty-one years, *feme covert*, or insane, shall not be taken or computed as part of the said limited period of sixteen years.

Revival of judgments.

SEC. 9. Judgments in any court of record in this state, may be revived by *scire facias*, or an action of debt may be brought thereon, within twenty years next after the date of such judgment, and not after: *Provided*, That the time during which the person who is, or shall be, entitled to the benefit of such judgment, shall have been under the age of twenty-one years, *feme covert*, or insane, shall not be taken or computed as part of the said limited period of twenty years.

Suits against persons entering into bonds or recognizances as sureties for public officers.

SEC. 10. And whereas, it is reasonable that persons entering into bonds or recognizances, as sureties for any public officers, should be exonerated from their responsibility within a reasonable term after such officers respectively shall die, resign, or be removed from office; therefore—*Be it further enacted*, That it shall not be lawful for any person or persons whomsoever, to commence and maintiain any suit or suits on any bonds or recognizances, which shall hereafter be given and entered into by any person or persons, as sureties for any public officer, from and after the expiration of the term of five years, to be computed from the time at which the cause of action shall have accrued; and if any such suit or suits shall be commenced, contrary to the intent and meaning of this act, the defendant or defendants respectively, shall and may plead the general issue, and give this act and the special matter in evidence; and if the plaintiff or plaintiffs be non-suit, or if a verdict or judgment pass against him or them respectively, the defendant or defendants shall respectively recover double costs.

Suits on accounts for goods sold and delivered.

SEC. 11. All suits or actions, founded upon any account for goods, wares or merchandize, sold and delivered, or for any articles charged in any store account, shall be commenced and sued within two years next after the cause of such suit or action, or the delivery of such goods, wares and merchandize, and not after; except, that in the case of the death of the creditors or debtors, before the expiration of the said term of two years, the further time of one year from the death of such creditor or debtor, shall be allowed for the commencement of any such suit or action. And to prevent imposition or deception herein, the respective times or dates of the delivery of the several articles charged in any such account, or any receipt taken for the delivery of them, shall be particularly specified. And if any merchant or trader shall wilfully post date any article or articles in such account, or the receipt taken for the delivery of them, he shall forfeit and pay ten fold the amount of the article or articles,

Times of delivery of articles charged in accounts, to be specified.

so post dated, to be recovered, with costs, by warrant where the penalty does not exceed the jurisdiction of a justice of the peace, and by action of debt or information in any court of record where the penalty shall exceed the jurisdiction of a justice of the peace, to the informer, where the informer prosecutes, or to the state for the use of the literary fund, where the prosecution shall be first instituted on the public behalf. And to prevent any doubt in the construction hereof, it is hereby declared, that the before mentioned limitation of two years, shall take place and be computed from the respective dates or times of delivery of the several articles entered or charged in any such account; and that all such articles as shall have been of more than two years standing when the suit or action was commenced, shall be disallowed and rejected, and verdict shall be given or judgment rendered, for no more than the amount of such articles, as appear to have been actually charged or delivered within two years next before the commencement of the suit or action as aforesaid, except as above excepted.

Limitation to be computed from the times of delivery of the articles.

Provision as to persons absent from the state when the cause of action accrued against them.

Sec. 12. If any person or persons against whom there is or shall be any cause of action, as is specified in the preceding sections of this act (except for the recovery of lands, tenements, or hereditaments,) is or are, or shall be out of this state, at the time of the cause of such action accruing, or any time during which a suit might be sustained on such cause of action, then the person or persons, who is or shall be entitled to such action shall be at liberty to bring the same against such person or persons, after his, her, or their return into this state; and the time of such person's absence, shall not be accounted or taken as a part of the time limited by this act.

Debt against executor or administrator on a judgment obtained against his testator or intestate.

Sec. 13. No action of debt shall be brought against any executor or administrator, or other person having charge of the estate of a testator or intestate, upon a judgment obtained against his testator or intestate, nor shall any *scire facias* be issued against any executor or administrator, or other person having charge of the estate as aforesaid, to revive such judgment, after the expiration of six years from the qualification of such executor or administrator, or of such other person having charge of the estate and all such judgments, after the expiration of six years, upon which no proceedings shall have been had, shall be deemed to have been paid and discharged: saving to all persons *non compos mentis*, *femes covert*, or infants, who may have been entitled to the benefit of such judgment, three years after their several disabilities removed.

Within what time plaintiff may re-commence his action where the judgment is arrested or reversed.

Sec. 14. If in any of the said actions specified in any of the preceding sections of this act, judgment be given for the plaintiff, and the same be reversed by writ of error; or if a verdict pass for the plaintiff, and upon matter alleged in arrest of judgment, the judgment be given against the plaintiff, then the said plaintiff, his or her heirs, executors or administrators, as the case shall require, may commence a new action within one year after such judgment reversed, or given against the plaintiff, and not after

Sec. 15. No bill of review shall be granted by the supreme court, or any judge thereof, or by the superior court of chancery, to any decree pronounced in a cause which shall be finally decided, unless the same be applied for within two years next after such final decision, saving to infants, *femes covert*, and persons of insane mind, a right to obtain such bill of review, within two years after their respective disabilities are removed.

Bills of review, within what time to be applied for.

Sec. 16. No writ of error or *supersedeas* shall be granted to any judgment of a court of law, after the expiration of two years from the time when such jbdgment shall have been made final: saving to all person *non compos mentis*, infants and *femes covert*, two years after their several disabilities are removed.

Writs of error within what time to be granted.

Sec. 17. In all actions of assault and battery, and slander, commenced and prosecuted in any court of law in this state, if the jury find for the plaintiff under the sum of ten dollars, he shall not recover any costs. And in all actions of trespass *quare clausum fregit*, where the court before whom the trial shall be, shall not be satisfied, and enter upon the minutes, that the freehold, title, or interest of the land mentioned in the plaintiff's declaration, was or might have been in good question, or that the trespass was wilful or malicious; and in all other actions of trespass, where the court before whom the trial shall be, shall not be satisfied, and enter upon the minutes, that the trespass was wilful or malicious; and in all actions upon the case, actions of covenant, and actions of debt for a penalty intended to secure the performance of a covenant or condition, where the court before whom the trial shall be, shall not be satisfied, and enter upon the minutes, that the action was neither frivolous nor vexatious, if the jury find under ten dollars, the plaintiff shall not recover more costs than the sum so found; and if more costs are awarded, the judgment shall be void, and shall be amended upon a motion at any time, by the court who awarded the same; and the party injured shall be redressed as to such costs so wrongfully awarded, in case the same be levied upon him: And, where several persons shall be made defendants in any action of trespass, assault, false imprisonment or ejectment, and upon the trial thereof any one or more of them shall be acquitted by verdict, every defendant so acquitted, shall have and recover his costs of suit, in like manner as if a verdict had been given against the plaintiff or plaintiffs, and acquitted all the defendants; unless the court, before whom such cause sh[illegible]e tried, shall be satisfied that there was reasonable cause for making such person or persons defendant or defendants to such action, and shall order it otherwise.

When plaintiff shall recover no costs if the jury find in his favor.

When no more costs than damages.

Remedy where more costs shall be awarded.

Cases wherein one or more of several defendants when acquited shall recover costs.

In trespass *quare clausum fregit*, if defendant plead a disclaimer and involuntary trespass with tender of amends, if it be found for defendant or plaintiff be non-suited, plaintiff shall be barred.

SEC. 18. In all actions of trespass *quare clausum fregit*, wherein the defendant or defendants shall disclaim, in his or their plea, to make any title or claim to the land in which the trespass is by the declaration supposed to be done, and the trespass be by negligence, or involuntary, the defendant or defendants shall be admitted to plead a disclaimer, and that the trespass was by negligence or involuntary, and a tender, or offer of sufficient amends for such trespass before the action brought; whereupon, or upon some of them, the plaintiff or plaintiffs shall join issue; and if the said issue be found for the defendant or defendants, or the plaintiff or plaintiffs shall be non-suited, the plaintiff or plaintiffs shall be clearly barred from the said action or actions, and all other suits concerning the same.

CHAPTER 22.

An act, to prescribe the mode of changing the *venue* in civil cases.

Passed January 20, 1823.

Oath to be made by the party desiring a change of *venue*. (*See Chap. 13 sec. 172.)

SEC. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi in general assembly convened*, That when either party to any civil action instituted in a circuit court of this state, shall desire to change the *venue*,* he, she or they shall make oath before one of the judges of the supreme and circuit courts, that he, she or they has or have good reason to believe that from the undue influence of the adverse party, prejudice existing in the public mind, or for some other sufficient cause to be described by such party, he, she or they could not obtain a fair and impartial trial in the county wherein the action may be depending; and that the application is made as soon as could be after being advised of such undue influence, prejudice, or other cause as aforesaid, and not to delay the trial or to vex or harass the adverse party.

Petition to be presented and proof adduced of notice to the adverse party.

SEC. 2. The party applying for any change of *venue*, shall present to a judge a written petition, setting forth the reasons, and shall produce proof of a reasonable notice in writing to the adverse party, of the time and place of making the application, and thereupon the judge shall hear the parties and examine the evidence, which either may adduce, and if on such hearing and examination he shall be of opinion, that the party applying cannot have a fair and impartial trial in the county, wherein the action is depending, it shall be his duty to award a change of *venue* to some adjoining county in which neither party resides, and if practicable in which a circuit court may next be held.

County to which the *venue* shall be changed.

Order for removing the papers filed in the cause.

SEC. 3. The judge awarding a change of *venue* according to this act, shall, if in vacation, issue an order under his hand and seal, to the clerk of the court wherein the suit may be depending, to transmit the papers belonging to and filed in the cause, to the clerk of the court to which the *venue* shall be changed, which order shall be returned with the petition and filed with the other papers in the suit.

Manner of transmitting the papers to the clerk of the court to which the suit may be removed.

Sec. 4. The clerk to whom such order shall be issued, shall make out a descriptive list of all the papers filed in the cause in his office, a copy whereof he shall send with said papers, first noting on the declaration, or other leading paper, all the steps which shall have been taken by the parties, and all the orders made by the court, with their dates, and shall carefully and safely put all of said papers with said descriptive list, into a package to be well covered, sealed up and directed to the clerk of the court to which the suit may be removed, and shall (if not otherwise ordered by the judge) take the receipt of the party obtaining the change of *venue*, for the papers contained on said list, and deliver the package to said party, to be carried to the clerk of the court to whom it may be directed. But if the court or judge granting the change of *venue*, shall have any sufficient reason suggested to him, why either party should not have the care of the papers to be transmitted, the said court or judge shall direct in said order, that the party applying, previously to a removal of the papers, shall pay to the clerk the sum of two dollars, seventy-five cents, for every twenty miles of distance from the place where the suit is depending to that to which it is ordered to be removed, and it shall be the duty of the clerk, on the payment of said sum of money, to carry the papers or to employ some trust-worthy person to carry them, to the clerk of the court to whom they may be directed. And the party obtaining a change of *venue* under this act, shall pay to the clerk all costs, an attorney's fee excepted, which may have accrued in the court, wherein the suit is depending, before the papers shall be transmitted.

Costs to be paid before the papers shall be transmitted.

Duty of the clerk to whom the papers are transmitted.

Sec. 5. The clerk to whom the papers may be transmitted according to this act, shall open the seal of the package, and compare the papers with the descriptive list, and shall give to the party or person delivering the same, a receipt therefor. He shall then enter the cause in his docket, as if it had been commenced in the court of which he is clerk, and issue subpœnas for witnesses as in other cases.

Suits not to be moved but once, &c.

Sec. 6. No civil suit shall be removed more than once, or in any other manner than prescribed by this act, and in no case, where it shall appear to the judge, to whom application for removal may be made, that there has been any unnecessary delay or negligence of the party in making such application: *Provided*, That nothing herein contained shall be construed to alter the law, providing for the removal of suits, commenced out of the county of the residence and freehold of defendants.

CHAPTER 23.

An act, concerning the manner of authenticating foreign deeds, records, and other instruments in writing.

Passed June 10, 1822.

How foreign instruments in writing must be authenticated when admitted as evidence.

SEC. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi, in general assembly convened,* That all deeds and other instruments in writing, foreign judgments, specialties on record, registers of births and marriages, made, executed, entered into, given and registered by and between persons residing in any foreign kingdom, state, nation or colony, without the jurisdiction of the United States, if acknowledged by the party making the same, or proved by the number of witnesses requisite, before any court of law, or the mayor, or other chief magistrate of any city, town, or corporation, of the country in which the party shall dwell, certified by such court, or mayor, or chief magistrate, in the manner such acts are usually authenticated by them; and all policies of insurance, charter parties, powers of atttorney, foreign judgments, specialties on record, registers of births and marriages, as have been, or shall be made, executed, entered into, given and enregistered in due form, according to the laws of such foreign kingdom, state, nation, province or colony, and attested by a notary public, with a testimonial from the proper officer of the city, county, corporation, or borough, where such notary public shall reside, or the great seal of such kingdom, state, nation, province or colony, shall be evidence in all the courts of record within this state, as if the same had been proved in the said courts.

CHAPTER 24.

An act, providing for admitting copies of land office records, as evidence in the courts of this state.

(*Revived Jan. 21. 1823. See Chap. 5. sec. 1)

Passed June 29, 1822.*

Copies of land office records, when admitted as evidence.

SEC. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi, in general assembly convened,* That hereafter copies of the records appertaining and belonging to the land offices of the United States *established in this state,* duly authenticated by the proper officer having charge of the said records, shall be admitted as evidence in suits depending in the courts of this state, in all cases where the original or sworn copies could be admitted, without further or other proof of such record, in the same manner and with the same effect, and subject to the same rules and regulations as in cases of certified copies of records of any court of this state.

CHAPTER 25.

An act, to enable claimants of lands in the state of Mississippi to perpetuate the evidences of their claims.

Passed January 20, 1823.

Whereas many and serious injuries and inconveniences arise to many citizens of this state, from the decay or removal of land marks—

SEC. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi in general assembly convened*, That any person or persons within this state, who is or may be in lawful possession of any tract or parcel of land either by himself, herself or themselves, as owner or owners, agent or agents, executor or administrator, (where no suit in law or equity is then existing, concerning or in any manner affecting the title) may apply to the county surveyor of his, her or their respective county, requesting him to re-survey, re-mark, and establish the several boundaries thereof.

When application may be made to the county surveyor to survey and establish the boundaries of land.

SEC. 2. The county surveyor of the county, where such survey is to be made, shall give notice, by setting up the same on the door of the court house of his county, by inserting the same in some newspaper printed in his county, or by giving personal or written notice to all persons in possession of the adjoining lands, of the time and place of commencing such surveys; and that he will then and there take in writing, the depositions of such persons as he shall therein name, as material in identifying and establishing the true boundaries of the lands to be surveyed, which said notice shall be given at least twenty days previous to making such surveys.

County surveyor to give notice of the time, place, &c. to those in possession of adjoining lands.

SEC. 3. The county surveyor, as aforesaid, or his deputy, shall attend at the time and place so appointed, and shall, on oath, (which oath the said surveyor is hereby authorised to administer) receive all information relative to the corners, lines, or whatever may be of importance in truly establishing the original boundaries of said land, or the adjoining tract or tracts; and the surveyor shall take down in writing all such important information so given on oath, which shall be subscribed by the person or persons so deposing, by the chain carriers, and other persons present, and certified by the surveyor; and the same shall be annexed to the plat and field notes of the survey, and recorded in the office of the county court; the testimony so taken, and the surveys so made, shall be admitted and read in any suit or controversy which may hereafter arise concerning the premises, and have the same effect, as if the same had been taken in any court of law or equity in this state: *Provided*, The person or persons so deposing be not then residing within the limits of this state, at the time such testimony may be offered or intended to be introduced.

County surveyor to attend and take the depositions of persons present, relative to the boundaries.

When testimony so taken may be admitted as evidence.

Compensation of the county surveyor.

SEC. 4. The county surveyor shall be entitled to demand and receive from the person or persons, at whose instance such surveys are made, the same fees as are established by law, with such charges for printing, serving notices, and making records, as may accrue necessarily from the same.

CHAPTER 26.

An act, to prevent frauds and perjuries.

Passed June 10, 1822.

Certain contracts, agreements and promises not binding unless made in writing.

SEC. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi, in general assembly convened,* That no action shall be brought whereby to charge any executor or administrator, upon any special promise, to answer any debt or damage, out of his own estate; or whereby to charge the defendant upon any special promise, to answer for the debt, default or miscarriage of another person, or to charge any person upon any agreement, made upon consideration of marriage, or upon any contract for the sale of lands, tenements or hereditaments, or the making any lease thereof for a longer term than one year, or upon any agreement which is not to be performed within the space of one year from the making thereof, unless the promise or agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person by him or her thereunto lawfully authorised.

Conveyances of lands, goods, bonds, suits, judgments, or executions to defraud creditors, void as to them.

SEC. 2. Every gift, grant, or conveyance of lands, tenements or hereditaments, goods or chattels, or of any rent, common, or other profit or charge out of the same, by writing or otherwise; and every bond, suit, judgment or execution had, or made, and contrived of malice, fraud, covin, collusion or guile, to the intent or purpose to delay, hinder or defraud creditors of their just and lawful actions, suits, debts, accounts, damages, penalties or forfeitures, or to defraud or deceive those who shall purchase the same lands, tenements or hereditaments, or any rent, profit or commodity out of them, shall be from henceforth deemed and taken only as against the person or persons, his, her or their heirs, successors, executors, administrators or assigns, and every of them, whose debts, suits, demands, estates, interests, by such guileful and covinous devices and practices as aforesaid, shall or might be in anywise disturbed, hindered, delayed or defrauded, to be clearly and utterly void; any pretence, color, feigned consideration, expressing of use, or any other matter or thing to the contrary notwithstanding. And moreover, if any conveyance be of goods or chattels, and be not on consideration deemed valuable in law, it shall be taken to be fraudulent within this act, unles the same be by will, duly proved and recorded, or by deed in writing acknowledged or proved; and such deed, if the same be for real estate, shall be

Conveyances of goods not on a valuable consideration, to be deemed fraudulent unless by will or deed proved and recorded.

acknowledged or proved, and recorded in the county where the land conveyed is situated; and if for personal property, then in the county where the donee shall reside, or the property shall be; and the proof or acknowledgement, in either case, shall be taken or made, and certified, in the same manner as conveyances of lands and tenements are by law directed to be acknowledged or proved, and recorded within three months after the execution thereof; unless in the case of personal property, possession shall really and *bona fide* remain with the donee. And in like manner, where any loan of goods and chattels shall be pretended to have been made to any person, with whom, or those claiming under him, possession shall have remained by the space of three years, without demand made and pursued by due course of law on the part of the pretended lender, or where any reservation or limitation shall be pretended to have been made, of a use or property by way of condition, reversion, remainder, or otherwise, in goods and chattels, the possession whereof shall have remained in another, as aforesaid, the same shall be taken as to the creditors and purchasers, of the persons aforesaid, so remaining in possession, to be fraudulent within this act; and that the absolute property is with the possession; unless such loan, reservation or limitation of use, or property where declared by will, or by deed, in writing, proved or acknowledged, and recorded as aforesaid.

In what cases of loan of goods the absolute right shall be deemed to be with the possession.

SEC. 3. This act shall not extend to any estate or interest in any lands, goods or chattels, or any rents, common, or profit out of the same, which shall be upon good consideration, and *bona fide*, lawfully conveyed or assured to any person or persons, bodies politic or corporate.

This act not to extend to lands or goods *bona fide* sold and conveyed.

CHAPTER 27.

An act, to reduce into one, the several acts concerning executions, and for the relief of insolvent debtors.

Passed June 22, 1822.

SEC. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi, in general assembly convened*, That all persons who have, or shall hereafter recover any debt, damages or costs, by the judgment of any court of record, within this state, may, at their election prosecute writs of *fieri facias* or *capias ad satisfaciendum*, within the year, for taking the goods and chattels, lands and tenements, or body of the person or persons against whom such judgment is obtained, which writs shall bear teste in the same manner as original or mesne process, shall be returnable to the first day of the next term of the court, in which such judgment shall have been rendered, so that there be at least fifteen days between the date of the writ and the return thereof; and the clerk who shall issue any writ of *fieri facias* or *capias ad*

Executions, how to be issued, and returned.

To be fifteen days between the date and return.

satisfaciendum, shall mark thereon the day on which he issued the same: *Provided*, That if the plaintiff shall desire an execution to issue, returnable at a farther day, the clerk shall issue the same accordingly, so as the return day thereof be upon a court day, within ninety days next after the date of such writ. And the forms of said writs shall be as follows, *mutatis mutandis*.

Forms of the writs.

A FIERI FACIAS, IN DEBT.

Against goods and chattels lands and tenements.

Debt

"The state of Mississippi, to the sheriff of —— county, greeting: We command you, that of the goods and chattels, lands and tenements, of A B late of your county, you cause to be made the sum of ——, which C. D. lately in our —— court, hath recovered against him for debt, also the sum of ——, which to the said C. D. in the same court, were adjudged for his damages, by reason of the detention of the said debt, with interest on said sums, at —— *per centum per annum*, from the —— day of ——, until paid, and the sum of —— for his costs by him ubout his suit in that behalf expended, whereof the said A. B. is convicted, as appears to us of record, and that you have the said moneys before the judges (or justices as the case may be,) of our said court, on the——day of —— next, to render to the said C. D. for his debt, damages and costs aforesaid: And have then there this writ.

"Witness, &c."

THE SAME IN CASE, UPON A PROMISE.

Case, assumpsit

As before, unto —— "for his damages which he hath sustained, by reaon of the non-performance of a certain promise and assumption, by the said A. B. to the said C. D. lately made, with interest on said sum, at —— *per centum per annum*, from the —— day of ——, until paid, also the sum of ——, for his costs by him about his suit in that behalf expended, &c."

IN TRESPASS.

Trespass.

As before, unto —— "for his damages by occasion of a certain trespass, by the said A. B. to the said C. D. offered, with interest on said sum at —— *per centum per annum*, from the —— day of ——, until paid, also the sum of ——, for his costs, &c."

IF FOR THE DEFENDANT, SAY,

For defendant.

"For his costs about his defence in a certain action, at the suit of the said, &c."

IN COVNENANT.

Covenant.

As before, unto ——, "for his damages, &c. by reason of a breach of a certain covenant, between the said A. B. and C. D. lately made, with interest on said sum at —— *per centum per annum*, from the —— day of ——, until paid, also ——, for his costs, &c."

A CAPIAS AD SATISFACIENDUM

"The state of Mississippi, to the sheriff of —— county greeting: We command you, that you take A. B. late of said county, if he be found therein, and him safely keep, so that you have his body before the judges (or justices) of our court, &c. the —— day of —— next, to satisfy C. D. the sum of ——, which the said C. D. lately in our —— court, hath recovered against him for debt, also, &c." As before in case, trespass, or covenant, as in the *fieri facias.* Which said writs, so issued, shall be executed by the sheriff, or other officer, to whom the same shall be directed; and shall be returned according to the respective forms hereafter mentioned, to wit:

Against the body.

Forms of return.

THE RETURN OF A FIERI FACIAS.

"By virtue of this writ, to me directed, I have caused to be made the within mentioned sum of ——, of the goods and chattels, lands and tenements, of the within named A. B. which said sum of ——, before the judges, (or justices) within mentioned, at the day and place within contained, I have ready as that writ requires."

Fieri facias executed.

OR,

"The within named A. B. hath no goods or chattels, lands or tenements within my county, whereof I can make the sum within mentioned, or any part thereof."

When no goods

OR,

"By virtue, &c." I have caused to be made of the goods and chattels, lands and tenements, of the within named A. B. the sum of ——, which I have ready to render to the within named C. D. in part of the debt, damages and costs, within mentioned. And I do further certify, that the said A. B. hath no more goods and chattels, lands or tenements, within my county, whereof at present I can make the residue of the said debt, damages and costs, as by the said writ is required."

When part is levied.

RETURN OF A CAPIAS AD SATISFACIENDUM.

"By virtue of this writ, to me directed, I have taken the within named A. B. whose body, before the judges (or justices) within named, at the day and place within contained, I have ready to satisfy C. D. of the debt, damages and costs, within mentioned."

Capias executed.

OR,

"The within named A. B. is not found in my county."

Not executed.

SEC. 2. Execution may issue on any judgment rendered, or to be rendered in any court of record, in this state, with stay of execution, at any time within one year next after the expiration of such stay: *Provided,* That the stay of execution be entered upon the minutes of the court, at the same court when the judgment shall be rendered; and also after the dissolution of any injunction of or from the superior court of chancery, or the

Within what time execution may issue after the expiration of a stay.

After the dissolution of an injunction or discharge of *supersedeas*.

discharge or expiration of any *supersedeas* on appeal, or any writ of error at any time within one year after dissolution of such injunction or discharge, or expiration of such *supersedeas*.

Terms of issuing another execution, when the first has not been served or has not been satisfied.

Sec. 3. When any execution shall issue, and the party at whose suit the same is issued, shall afterwards desire to take out another writ of execution, at his own proper costs and charges, the clerk may issue the same, if the first writ be not returned and executed; and where upon a *capias ad satisfaciendum*, the sheriff, or other, officer shall return that the defendant is not found, the clerk may issue a *fieri facias*, and if upon a *fieri facias*, he shall return that the party hath no goods and chattels, lands or tenements, or that only part of the debt is levied; in such case it shall be lawful to issue a *capias ad satisfaciendum*, upon the same judgment; and where one judgment is obtained against several defendants, execution thereon shall issue, as if it were against one defendant, and not otherwise.

Execution against several defendants.

If a debtor dies in prison, creditor may have a new execution against his estate.

Sec. 4. If any person being in prison, charged in execution, shall happen to die in execution, the party or parties at whose suit, or to whom such person shall stand charged in execution, for any debt or damages recovered, his or their executors or administrators may, after the death of the person so dying in exetion, lawfully sue forth and have new execution against the goods and chattels, lands and tenements, or any of them, of the person so deceased: *Provided*, That this act shall not extend to give liberty to any person or persons, their executors or administrators, at whose suit any such party shall be and die in execution, to have or take any new execution against any of the lands, tenements or hereditaments, of such party dying in execution, which shall at any time after the said judgment or judgments be by him sold *bona fide*, for the payment of any of his creditors, at whose suit he shall be in execution, and the money paid, or secured to be paid to any such creditors, with their privity, in discharge of his or their debts, or some part thereof.

Except lands *bona fide* sold for the payment of any creditor at whose suit he shall be in execution.

Sale of lands by a debtor in execution, void as to the creditor, unless such sale be made for the payment of his debt.

Sec. 5. Every sale, conveyance and transfer of any lands or tenements, made by any person charged in execution for any debt or damages, shall be absolutely null and void, as to the creditor or creditors at whose suit he is so charged in execution; unless such sale, conveyance or transfer, be absolute and *bona fide*, and be made for the payment of the debt and damages due to such creditor or creditors, and the proceeds of such sale, conveyance or transfer, be paid or secured to be paid, within a reasonable time to such creditor or creditors. And all executions of *capias ad satisfasciendum*, levied after the commencement of this act, shall bind the real estate of the defendant, from the time when they shall be levied.

Persons in execution delivered by privilege of the general assembly.

Sec. 6. If any person taken in execution, be delivered by privilege of either house of assembly, so soon as such privilege ceaseth he shall return himself a prisoner in execution, or be liable to an escape.

Execution may issue to any county where defendant or his property may be found.

SEC. 7. When judgment shall be obtained in any court of record within this state, for any debt or damages, and the person against whom such judgment shall be obtained, shall remove himself or his effects, or shall reside out of the limits of the jurisdiction of such court, it shall be lawful for the clerk of the court where judgment was given, at the request of the party for whom the same was rendered, to issue any writ of *fieri facias*, or *capias ad satisfaciendum*, or any other legal or proper writ of execution, or attachment for the non performance of a decree in chancery, (as the case may require) in the form and under the teste herein before prescribed, and to direct the same to the sheriff, or other proper officer, of any county within this state, where the defendant or debtor, or his goods and chattels, lands or tenements shall be found; which said sheriff or other officer, to whom the same shall be directed, is hereby empowered and required to serve and execute the same, and shall make return thereof to the court where the judgment was given, in the manner herein before prescribed and directed.

Property bound from the time execution is delivered to the officer.

SEC. 8. No writ of *fieri facias*, or other writ of execution, shall bind the property of the goods, lands and tenements, against which such writ is sued forth, but from the time that such writ shall be delivered to the sheriff, under sheriff, coroner or other officer, to be executed; and for the better manifestation of the said time, such sheriff, or other officer, his deputy or agent, shall upon the receipt of any such writ, without fee for doing the same, endorse thereon, the day of the month and year when he received the same; and if two or more writs shall be delivered against the same person on the same day, that which was first delivered shall be first satisfied. If any sheriff, coroner, or other officer, to whom any execution shall be delivered, shall fail or neglect to endorse thereon, the day of the month and year when he received the same, every such person, for every such failure, shall be liable, on a motion to be made before the court from which the execution issued, to a penalty not exceeding fifteen *per centum*, upon the amount of the said execution, if it be for money, and if it be for a specific thing, one hundred dollars, to the use of the party injured, upon giving ten days previous notice of such motion; and shall, moreover, be liable to the action of the party grieved, for all damages arising from such failure.

Time of delivery to be endorsed by the officer.

Slaves not to be taken in execution for less amount than one hundred dollars.

SEC. 9. No sheriff or other officer, to whom any writ of *fieri facias* shall be directed, shall take in execution any slave or slaves, unless the debt and costs mentioned in such *fieri facias*, shall amount to the sum of one hundred dollars: *Provided*, There be shewn to such sheriff or officer, by the defendant or any other person, sufficient other goods and chattels of such defendant, within the county of such sheriff or officer, upon which he may levy the debt, damages and costs mentioned in such *fieri facias*.

Proviso.

Names of slaves sold, to be certified on the back of the execution.

Sec. 10. Where any slave or slaves shall be taken in execution, and sold, the names of such slaves shall be certified on the back of such execution, and returned to and recorded among the records of the court from which such execution shall issue.

Slaves and live stock token in execution, to be supported by the officer.

Sec. 11. When any sheriff, or like officer, shall serve any writ of execution on slaves, horses, or other stock, and the same shall not be immediately restored to the debtor, on his executing a forthcoming bond as herein after provided, it shall and may be lawful for such officers, and they are hereby required to provide sufficient sustenance for the support of such slaves or live stock, until such slaves or stock be sold, or otherwise legally discharged from such execution; and upon the return of any execution, the court may and shall, upon the motion of the officer serving the same, settle and adjust what such officer shall be allowed for his expenses incurred by supporting such slaves or stock; and the said officer shall and may be allowed to retain the same out of the money arising from the sale of the said slaves or stock.

Expense thereof to be paid out of the proceedings of the sale.

When officer may require bond of plaintiff before sale.

Sec. 12. If any sheriff or other officer shall levy an execution on property, and a doubt shall arise whether the right of such property is in the debtor or not, such sheriff or officer may apply to the plaintiff, his attorney or agent, for his bond, with good security, payable to the sheriff of the county, or other officer, and conditioned to indemnify the said sheriff or other officer against all damages, which he may sustain in consequence of the seizure or sale of the property on which the execution shall have been levied; and moreover, to pay and satisfy to any person or persons, claiming title to such property, all damages which such person or persons may sustain in consequence of such seizure or sale; which, if the plaintiff, his agent or attorney, shall refuse or fail to give, on or before the day of sale, the sheriff, or other officer, shall be justifiable in delivering such property to the party from whose possession it was taken: *Provided, however*, That such property shall not be so restored, unless the plaintiff, his agent or attorney, shall have reasonable notice, before the time of sale, that such bond and security would be required of him.

Bond how prosecuted.

Sec. 13. If such bond and security be given, it shall be returned, with the execution, to the office of the court from which it issued; and any person claiming such property, may, in the name of such sheriff, or other officer, prosecute his or her suit upon the bond, and recover such damages as a jury may assess.

Actions thereon against the officer barred unless obligors are insolvent.

Sec. 14. The party claiming such property shall, after the due execution of such bond, be barred of his right of action, against the sheriff or other officer levying such execution, unless the obligors in the said bond shall become insolvent.

When a *capias ad satisfaciendum* is served on a debtor he may tender property to the officer.

SEC. 15. Where any writ of *capias ad satisfaciendum*, has been or shall be served on any debtor, it shall be lawful for such debtor to tender to the sheriff or other officer serving the same, slaves, or personal property, lands and tenements, to the value of the debt, damages and costs, for which such execution has issued, or may hereafter issue, which property the said sheriff or other officer, may and shall receive, and proceed to sell in like manner, as is directed by this act, in the case of goods and chattels, lands and tenements, taken in execution, upon a writ of *fieri facias;* and shall thereupon discharge such debtor out of custody: *Provided always*, That if such property so tendered, shall not be sufficient to satisfy the debt or damages, and costs, or shall be under any lien or incumbrance, so that the whole cannot be sold, a new *capias ad satisfaciendum*, or *fieri facias*, at the option of the plaintiff, shall issue for any balance, and the clerk of the court, from which such execution originally issued, shall, upon return of the sheriff, or other officer, of the insufficiency or incumbrance, as aforesaid, issue a new *capias ad satisfaciendum* or *fieri facias*, if required. But, where such property shall have been under any incumbrance, the debtor shall not be at liberty to tender such slaves, or other personal property, lands and tenemnts, on a second *capias ad satisfaciendum* being served, or, in case of a *fieri facias* issued in consequence of such return, to avail himself of the privileges of this act.

Officer to restore money to the defendant. levied by execution which shall be enjoined.

SEC. 16. When any sheriff, or other officer, under any execution shall receive the whole or any part of the money, for which the said execution was issued, and the person against whom such execution may have issued, his executors or administrators, shall obtain an injunction to such execution, or any part of the money mentioned therein, before the money received by such sheriff, or other officer is paid to the plaintiff, his agent or attorney, or his executors or administrators; in every such case, the sheriff, or other officer, his executors or administrators, ahall repay the person or persons against whom such execution issued, his or their executors, administrators, or agent, the money so received, or such part thereof, as may be enjoined; and if any sheriff or other officer, his or their executors or administrators, shall fail or refuse, when required, to pay such sum of money so received and enjoined, to the person having a right to demand the same, such sheriff, or other officer, and his securities, his and their executors and administrators, and every of them, shall be liable to the like penalty and judgment in favor of the person, his executors or administrators, by whom the said injunction is obtained, as is directed by law, in favor of the plaintiff, against the sheriff, for not paying the money levied on an execution.

Liability on failure.

If the amount of sale under execution exceed the debt and costs, the

SEC 17. Wheresoever on a sale made under any execution, the amount of such sale shall exceed the debt or damages, interest and costs, for which such execution issued, the sheriff, or other officer, shall pay such excess or surplus to the debtor, his surplus shall be paid to the debtor.

executors, administrators, or agent; and if any sheriff or other officer, shall fail or refuse to pay such surplus or excess, when required, such sheriff or other officer, his security or securities, his and their executors or administrators, shall, each and every of them, be liable to the like penalty and judgment, in favor of the said debtor, as is prescribed and directed by law, in favor of the plaintiff, against the sheriff, for not paying over money levied on an execution.

When a writ of *venditioni exponas* shall be issued.

Sec. 18. If the goods and chattels, lands and tenements, taken by any sheriff or other officer, or any part thereof, shall remain in his hands unsold, he shall make return accordingly; and thereupon the clerk of the court from which the execution issued, shall and may, and he is hereby required, to issue a *venditioni exponas* to such sheriff, or other officer directed; whereupon the like proceedings shall be had, as might and ought to have been had on the first executions: Which writ of *venditioni exponas* shall be in the form following:

Form of the writ.

"The state of Mississippi, &c. Greeting: We command you, that you expose to sale those goods and chattels, lands and tenements, of A. B. to the value of ——, which according to our command, you have taken, and which remain in your hands unsold, as you have certified to our judges (or justices) of our —— court, to satisfy C. D. the sum of ——, whereof, in our said court, he hath recovered execution against the said A. B. by virtue of a judgment in the said court, and that you have, &c."

Sec. 19. (*Repealed January* 21, 1823—*See Chap.* 28 *Sec.* 4.)

Lands not to be levied on, if goods are tendered.

Sec. 20. No writ of *fieri facias*, shall be levied on lands and tenements, if personal property sufficient to satisfy such execution, be tendered to the sheriff or other officer, by the debtor.

At what time and place property shall be sold.

Sec. 21. No sheriff or other officer, shall sell any property, by virtue of any execution, or other process whatsoever, in a private or retired part of his county; but he shall sell the same at the court house thereof, on the first Monday or third Monday of every month; which sale shall not commence sooner than eleven o'clock in the morning, nor be continued later than four o'clock of the same day; and the sheriff, or other officer, shall give, in the case of personal property, at least *ten* days public notice; and in the case of lands and tenements, at least *thirty* days public notice of such sales, by advertisement at the door of the court house of his county, and at two other public places within the same, one of which shall be in the vicinage or neighborhood at which the property was taken, and also, in one of the public gazettes, if there be one published in his county; and on such sale day, the sheriff, or other officer, shall proceed to sell, by auction, the goods and chattels, lands and tenements, to the highest bidder, or so much thereof, as shall be sufficient to satisfy the execution, and all costs accruing thereon.

Officer to give notice of sale.

Adjournment of sale.

Sec. 22. It shall be lawful for the sheriff, or other officer, on the application of the defendant, in execution, where the same shall be levied on personal property, to call upon three respectable, disinterested freeholders of his county, and if they should unanimously certify, on oath, to be administered by the sheriff, or other officer, that the property so levied on, will not command a reasonable price in consequence of a defect of bidders, arising from inclement weather, or other cause, to adjourn the sale of such property, to the next regular sale day; and such sheriff, or other officer, shall give notice of such adjourned sale, in the manner herein before required.

Certain property exempted from execution.

Sec. 23. The agricultural implements of a farmer, necessary for one male laborer; the tools of a mechanic, necessary for carrying on his trade; the books of a student necessary for the completion of his education; the wearing apparel of each and every person; one bed and bedding, one plough horse, provided the value therof shall not exceed one hundred dollars, and one cow and calf of every house-keeper; and the arms and accoutrements of each and every person of the enrolled militia of the state, shall be exempted from all executions and distresses whatsoever.

Goods on leased premises not liable to execution until the rent in arrear is paid or tendered.

Sec. 24. No goods or chattels whatsoever, lying or being in or upon any messuage, lands or tenements, which are or shall be leased for life or lives, term of years, or at will or otherwise, shall at any time hereafter be liable to be taken by virtue of any writ of execution, or other process whatsoever, unless the party so taking the same, shall, before the removal of the goods off such premises, pay or tender to the landlord or lessor thereof, or his or her agent, all money due for the rent of the said premises, at the time of taking such goods and chattels in execution: *Provided, nevertheless*, That the money so due, do not amount to more than one year's rent; and if more be due, then the party suing out such execution, paying or tendering to such landlord or his agent, one year's rent, may proceed to execute his judgment, and the sheriff or officer levying the same, is hereby empowered and required to levy, and pay to the plaintiff, as well the money so paid for the rent, as the execution money.

Proviso.

Proceedings when the property levied on, is claimed by a person not party to the execution.

Sec. 25. When any sheriff or other officer shall levy any writ of *fieri facias* on property claimed by any person, not a party to such execution, or when any person taken by virtue of a writ of *capias ad satisfaciendum*, shall surrender property in discharge of such writ, which shall be claimed by any person or persons not named in the execution, such person or persons, his, her or their executors or administrators, may make oath or affirmation to his, her or their right and title to the property so levied on, or surrendered as aforesaid, and on the claimant or claimants entering into bond payable to the plaintiff in the execution, with one or more good and sufficient sureties, in the penalty of double the amount of the execution, and costs, conditioned for the

Sale to be postponed if claimant make oath and enter into bond.

payment to the plaintiff in the execution, of all such damages as may be assessed against the claimant or claimants, by a jury, in case his, her or their claim shall not be sustained, or shall appear to have been made for fraudulent purposes, or for delay, and that he, she or they will well and truly deliver the same property to the sheriff, or other officer, if the claim thereto should be determined against the claimant or claimants, it shall and may be lawful for the sheriff, or other officer, to postpone the sale of the property so claimed as aforesaid, until the next term of the court, from which such execution issued, and deliver the same to the person or persons making the claim and giving bond with security as above required; and it shall be the duty of the sheriff, or other officer, to return the bond with the execution to the clerk's office from which such execution issued, and the court shall thereupon direct an issue to be made up between the parties, to try the right of property, before a jury, at the same term, unless good cause be shewn for a continuance; and the jury shall give such damages against the claimant or claimants, not less than ten per cent. on the amount of the execution, as may, in their opinion, be reasonable and just, to the plaintiff, in case they shall be of opinion that such claim was fraudulent, or intended for delay only: *Provided*, That the burden of the proof shall be upon the plaintiff in the execution; and in case the right of property should be determined against the claimant or claimants, and the same be not immediately thereafter delivered to the sheriff or other officer, the bond taken by the sheriff or other officer, and returned as aforesaid, shall have the force and effect of a judgment, and execution may issue thereon against all the obligors therein, for the amount of the plaintiff's demand and all costs, and the damages which may be assessed by the jury trying the right of property as herein before provided.

Issue to be made up for the trial of the right of property.

Burden of proof to be on the plaintiff in execution.

If by claimant's default, an issue is not made up at the first term, his bond shall be forfeited

SEC. 26. If the issue to try the right of property, be not made up at the first term of the court to which the execution is returnable, in consequence of any default of the claimant or claimants of the property levied on or surrendered, as aforesaid, to the sheriff or other officer, the bond given by such claimant or claimants shall be deemed and held as forfeited, and execution may issue thereon, in the same manner as if a verdict had been given by a jury against the right or title of such claimant or claimants: and, if by the default of the plaintiff in the execution, such issue shall not be made up as aforesaid, the claimant or claimants shall be discharged from the bond given as aforesaid, and the property therein mentioned shall not, thereafter, be liable to satisfy the plaintiff's execution.

If by plaintiff's default, claimant shall be discharged from his bond.

Proceedings when the officer shall return that no property is found, and plaintiff shall suggest that de-

SEC. 27. When the sheriff or other proper officer, of any county, shall return on any execution, that there is no property to be found in his county belonging to the defendant, and it shall be suggested by the plaintiff, that the defendant hath property in his own right, but hath fraudulently conveyed the same for fendant has fraudulently conveyed his property.

the purpose of defrauding his creditors, or to avoid the payment of the execution, notice in the nature of a *scire facias* shall be directed by the court, to issue to the person or persons in whose hands such property is supposed to be, or having such fraudulent conveyance, and on the return of the *scire facias*, executed, as in other cases, an issue shall be made up, and tried by a jury; and if the jury shall find the conveyance to be fraudulent, or without valuable consideration, the property thus fraudulently conveyed or made over, shall be subject to the plaintiff's execution, in the hands of the defendant, or the person or persons thus notified.

Officer to accept bond and security for the forthcoming of property on the day of sale.

SEC. 28. It shall be the duty of the sheriff, or other officer, serving an execution on slaves or other personal property, if the person whose property is levied on, or who may have delivered up property in discharge of his body, will give sufficient security to take a bond from such debtor and securities payable to the creditor or creditors, reciting the service of such execution, and the amount of money due thereon, in a penalty equal to double the amount of such execution, with all costs, with condition to have the same property so levied on, or surrendered, forthcoming at the day of sale, and place appointed by the sheriff or other officer for the sale thereof, at twelve o'clock (noon) of such day, to suffer such property to remain in the posession of, and at the risk of the debtor or debtors, until that time; and if the owner of such property or defendant in the execution shall fail to deliver up the same, according to the condition of the bond, or to pay the money mentioned in the execution, with all interest and costs, such sheriff or officer shall return the bond, with the execution, to the office of the clerk of the court, from which the execution issued, and that the bond was forfeited; and every forthcoming bond which shall be forfeited, shall have the force and effect of a judgment; and thereupon it shall be lawful for the clerk of the court, immediately upon the return of every such bond, forfeited, to issue execution thereon against the obligors therein, for the full amount of the plaintiff's demand, with all interest and costs; and upon such execution, the sheriff or other officer shall not take any security; and for the better direction of such officer, the clerk shall endorse upon every such execution, that "no security of any kind is to be taken."

Proceedings on bond where the property is not delivered.

Forthcoming bonds to be delivered to the creditor or returned.

SEC. 29. If any sheriff or other officer shall fail to deliver to the creditor, his agent or attorney, or other legal representative, on demand, any bond taken for the forthcoming of property, or to return the same to the office from which the execution issued, on the return day thereof, such sheriff or other officer, his executors or administrators, shall be liable to the same fine and penalty, for every month of such failure, to be recovered in the same manner by the party injured, as is directed by law against a sheriff for failing to return an execution.

Remedy of the obligee when the bond is quashed as faulty.

SEC. 30. If a forthcoming bond be, at any time, quashed as faulty, the obligee or obligees in such bond, besides his or their remedy against the sheriff or other officer, may, moreover, have execution on his or their judgment, in the same manner, as if such forthcoming bond had never been taken.

Officer may include his commission &c. in the bond

SEC. 31. Every sheriff or other officer, may include his commission and fee for taking the bond, in any forthcoming bond, taken by virtue of any writ of execution, but he shall not demand or receive such commission, unless the same shall be forfeited.

No security to be taken on executions against officers for money received on any process.

SEC. 32. When execution shall issue against the estate of any sheriff, under-sheriff, coroner or constable, or their sureties, or the heirs, executors, or administrators of either of them, upon a judgment obtained against such sheriff, under-sheriff, coroner or constable, or sureties, or the heirs, executors, or administrators of either of them, for money received by such sheriff, under-sheriff, coroner or constable, by virtue of any execution or process, levied or executed by him or them, or for any money collected or received by him or them, in any manner, as sheriff, under-sheriff, coroner or constable, no security for the payment of the money mentioned in such execution at a future day, or to have the property forthcoming at the day of sale, shall be taken or received; but the officer taking such estate in execution, shall proceed immediately to the sale thereof, notwithstanding such security be tendered, and for the better direction of such officer, the clerk issuing such execution, shall endorse thereon, that "*no security of any kind is to be taken.*"

Bonds for keeping the prison bounds.

SEC. 33. If any person or persons taken or charged in execution, shall enter into bond with good and sufficient securites, under a reasonable penalty, upon condition that he, she, or they shall not depart or go out of the rules or bounds of the prison, to which he, she, or they be committed, and that he, she, or they will render his, her, or their body or bodies to prison, in satisfaction of such execution, at or before the expiration of one year from the date of such bond, it shall be lawful for the sheriff or other officer, in whose custody such prisoner or prisoners shall be, to permit him, her or them, to go out of the prison and return at his, her or their pleasure, during one year after the date of such bond; after the expiration of which time, if the person or persons so taken or charged in execution, shall not have been discharged by due course of law, and shall not have rendered his, her, or their body or bodies to prison, according to the condition of such bond, the sheriff or other officer of the county, where such prisoner or prisoners were in custody, shall immediately proceed in the same manner, and the creditor, at whose suit, he, she or they, was, or were in custody, shall be entitled to the same remedies, as are prescribed by law, in relation to prisoners escaping and going out of the prison rules. And if the person or persons so charged in custody, shall render his, her, or their body or bodies, to prison, according to the condition of such bond, or shall be taken and committed to jail on an escape warrant, after the expiration of the time, during which he, she, or they, was or were entitled to the benefit of the rules or bounds of the prison, such prisoner or prisoners shall thereafter be closely confined in jail, and shall not be discharged, until the debt or demand, for which he, she or they was, or were taken or charged in execution, shall be paid; or until he, she, or they shall have taken and subscribed the oath and schedule, and shall have made the delivery and transfer of his, her, or their property, as required by law, for the discharge of insolvent debtors.

Method of discharging insolvent debtors.

Sec. 34. And for the relief of insolvent debtors, who shall be taken in execution, and to prevent the long imprisonment of unfortunate people, which can be of no benefit, but rather a disadvantage to their creditors: *Be it further enacted*, That if any person who now is, or shall hereafter be taken or charged in execution in any suit, commenced and prosecuted in any court of record within this state, it shall be lawful for any judge or justice of the court, to whose jail such person shall be committed, by warrant under his hand and seal, to command the jailor or keeper of the said prison, to bring before the court, if sitting, or if not sitting, before the judge of the supreme court, assigned to the circuit in which such person is confined, or before any two justices of the county court or judge of probate of the proper county, at the court house of such county, on a certain day to be appointed by such warrant, the body or bodies of such person or persons so in prison as aforesaid, together with a list of the several executions with which he, or she shall stand charged in the said jail, which warrant such jailor is hereby required to obey; and ten days notice thereof shall be given to the party or parties, or their executors, administrators or agents, at whose suits such prisoner or prisoners shall be in execution—and every such prisoner coming before the said court, judge or justices, as the case shall be, shall subscribe and deliver in a schedule of his whole estate, and make oath or affirmation, to the effect following, that is to say:

Prisoner's oath.

"I, A. B. do, in the presence of Almighty God, solemnly swear, (or affirm, as the case may be) that the schedule now delivered, and by me subscribed, doth contain, to the best of my knowledge and remembrance, a full, just, true and perfect account and discovery of all the estate, goods and effects, to me in any way belonging, and such debts as are to me owing, or to any person in trust for me, and of all securities and contracts whereby any money may hereafter become payable, or any benefit or advantage accrue to me or to my use, or to any other person or persons in trust for me; and that I, or any other person or persons in trust for me, have not land, money, stock, or any other estate, real or personal, in possession, reversion or remainder, of the value of the debt or debts with which I am charged in execution, and that I have not directly or indirectly, sold, lessened, or otherwise disposed of, in trust, or concealed, all or any

Prisoner's discharge.

Creditors by judgment, may have execution against property thereafter acquired.

Debtor not to be imprisoned, on any judgment obtained before he took the oath, unless a *capias* be issued by order of the court.

part of my lands, money, goods, stock, debts, securities, contracts or estate whereby to secure the same, or to receive or expect any profit or advantage therefrom, or to defraud or deceive any creditor or creditors to whom I am indebted, in any wise howsoever: So help me God." Which schedule, being so subscribed in open court, if taken in court, and if not, in the presence of the judge, or two justices as aforesaid, shall be returned to the office of the clerk of the court, whence the execution or other process issued, there to remain for the better information of the creditor or creditors, and after delivering in such schedule, and taking such oath, the prisoner shall be discharged by warrant from such court, or from the judge, or two justices aforesaid as the case may be, which warrant shall be sufficient to indemnify such sheriff or other officer, against any escape or escapes, action or actions whatsoever, which shall or may be brought, or prosecuted against him or them, by reason thereof—and if any action should be commenced against any sheriff or other officer, for performing his duty in pursuance of this act, he may plead the general issue, and give this act in evidence;—*Provided, always,* That notwithstanding such discharge, it shall be lawful for any creditor or creditors by judgment, at any time afterwards, to sue out a writ of *scire facias*, to have execution against any lands or tenements, goods or chattels, which such insolvent person shall thereafter acquire or be possessed of; but no person delivering in such schedule, and having taken the said oath, shall again be imprisoned on account of any judgment, which shall have been obtained against him or her previous to the time of taking such oath, unless by virtue of a *capias ad satisfaciendum*, directed to issue by the court in which the said judgment shall have been rendered. *And provided also,* That any person confined within the limits of any prison bounds shall be entitled to the benefit of this act, in the same manner, and under the same regulations, as those confined in jail; and all bonds given for the keeping of the said prison bounds, shall be null and void, after such prisoner shall be so discharged.

Debtor's estate, how to be disposed of.

SEC. 35. All the estate which shall be contained in such schedule as aforesaid, and any other estate which may be discovered to belong to the prisoner, for such interest therein as such prisoner hath, shall be vested in the sheriff of the county, wherein such lands, tenements, goods or chattels shall lie, or be found; and such sheriff is hereby authorised, empowered and required, within sixty days after the taking the said oath, previous notice of the time and place of sale being given, in the same manner as herein before directed in the case of sales by virtue of an execution, to sell and convey the same to any person or persons, for the best price that can be had for the same, and the money arising from such sale, shall be by such sheriff or officer paid to the creditor or creditors, at whose suit such prisoner or prisoners shall be imprisoned, saving to every such prisoner, the articles exempted from execution by this act; and if any sheriff or other officer shall fail to pay the money arising from such sales, according to law, he shall be liable to the same penalty, to be recovered in the same manner, and by the same persons, as if the said money had been levied by a *fieri facias.*

His debts and effects, how to be recovered.

SEC. 36. When any insolvent debtor shall be discharged pursuant to this act, and the schedule, subscribed and delivered in by such prisoner, shall contain money due to such prisoner or goods, chattels, or estates belonging to him, and in the possession of another, in such case, the clerk of the court with whom such schedule is directed to remain, shall immediately issue a summons against each of the persons named as debtors in the said schedule, and against such others as are therein said to have possession of any goods, chattels or estates, of the property of the prisoner, reciting the sum of money he or she is charged with, or the particular goods, chattels, or estates said to be in his possession, and requiring him or her to appear at the next term of the court, and declare on oath, whether the said money, or any part thereof, be really due to such prisoner, and whether such goods, chattels, or estate, be really in his or her possession, and are the property of such prisoner; and, if the person so summoned shall fail to attend according to such summons, or to shew good cause for his non-attendance, it shall be lawful for the court to enter judgment against every such person, for the money, goods, chattels, or estates in such schedule mentioned, together with costs of suit, an attorney's fee excepted; and if any such person so summoned, shall appear and be sworn, judgment shall be entered for so much of the money, goods, chattels or estates, as he or she shall acknowledge to be due, or to be of the property of such prisoner, and in his possesion, with costs as aforesaid; which judgment shall be entered in the name of the sheriff, who may thereupon proceed to levy the execution as in other cases, and to dispose of the money, goods, chattels or estates so recovered, in the same manner as the estate contained in the schedule is hereby directed to be disposed of: *Provided always*, That where any such garnishee shall not acknowledge the whole money to be due, or all the goods, chattels, or estates mentioned in the schedule to be the property of the prisoner, and in his possession, the sheriff, or such prisoner, at any time after, unless barred by any act limiting the time for the commencement of actions, shall be at liberty to claim the residue by legal process, and the former judgment as to such garnishee, shall be no further bar in such process, than for so much money, or such goods, chattels and estates, as the garnishee is thereby ordered to pay or deliver.

The money and effects may be tendered to the officer, at the time of executing summons.

SEC. 37. If any garnishee shall, at the time of executing such summons, tender to the officer executing the same, the money, goods or chattels mentioned therein, or any part thereof, it shall be the duty of such officer to receive the same, and give a receipt therefor; and any goods and chattels thus received, shall be sold by such officer, in the same manner as goods and chattels taken in execution: *Provided always*, That where all the money, goods, or chattels mentioned in such summons shall not be paid or delivered to such officer as aforesaid, like proceedings may be had for the residue, as in cases where no part is paid or delivered.

Liability of officer failing to return the summons or pay the money received.

Sec. 38. If any sheriff or other officer shall receive any money, goods or chattels, in pursuance of the above section, and shall fail to return the summons, or make a false return thereon, or shall fail to pay the money by him received, he shall be liable to the same recovery as for delinquency in the case of an execution; and the court, before whom such motion may be made, shall estimate the value of any goods or chattels named in such summons, and assess the fine accordingly.

The garnishee not liable for costs if he deliver the property to the officer

Sec. 39. If the garnishee shall pay the money, or so much thereof, as may be due, or shall deliver the goods and chattels, in his or her hands, to the sheriff or other officer, at the time of executing the summons, such garnishee shall not be liable to costs; but the legal costs together with a commission of five *per centum*, to the officer collecting the same, shall be paid out of such insolvent debtor's estate.

Any creditor may proceed against the garnishee.

Sec. 40. Any of the creditors may proceed against the garnishee or garnishees, or either of them; but he shall thereby acquire no preference to the money or other thing sued for, except that out of the subject recovered, it shall be the duty of the sheriff, or other proper officer, in whose name the claim is prosecuted, to pay to him his costs expended in the prosecution.

Sheriff may retain his expenses out of the debtor's estate.

Sec. 41. Every sheriff shall be allowed to retain, out of the effects of such insolvent debtor, all reasonable expenses in recovering such money, goods, chattels and estates, as aforesaid, including such fee to an attorney, for the proceeding against the garnishee, as shall be judged reasonable by the court; and if such effects be not sufficient, he shall be reimbursed such expenses, by such creditor as would have been entitled to receive the thing sued for; or, if there be more than one, so entitled, then by such creditors in proportion to the debt due them.

Creditor liable for debtor's prison fees.

Sec. 42. Where such insolvent person shall not be able to satisfy or pay his ordinary prison fees, the sheriff or jailor may demand and receive of the party or parties at whose suit such insolvent person shall be imprisoned, all such fees as shall become due, until such creditor shall agree to release such prisoner; and if the creditor upon notice given to him or her, his, or her attorney or agent shall refuse to give security to the sheriff or jailor, for the payment of such prison fees, or shall fail to pay the same when demanded, such sheriff or jailor shall discharge such debtor out of prison; *Provided nevertheless*, That such insolvent prisoner shall be afterwards liable to the action of the creditor to recover such fees; and such creditor shall and may, notwithstanding his consent to the releasing such prisoner, at any

Debtor afterwards liable to the creditor for the same.

time afterwards, sue out a *scire facias* to have a new execution against the lands and tenements, goods and chattels, of such prisoner, in case he or she shall afterwards become possessed of any.

Sec. 43. When any debtor is in custody on several executions, it shall not be lawful for such debtor to demand any more or other dieting, than if he were in custody on one execution only, nor shall any sheriff or jailor demand or receive more than the rate fixed by law, in case of a debtor confined on one execution only; which shall be paid by the creditor, at whose suit such debtor was first taken.

Prison fees to be paid by the creditor at whose suit debtor is first taken.

Sec. 44. Where any person now is, or hereafter may be in custody, upon original or mesne process, such person shall be entitled to the benefit of the provisions of this act, concerning insolvent debtors, in the same manner as is herein provided for persons charged in execution: *Provided nevertheless*, That no plaintiff in any suit against any person who may have availed himself or herself of the provisions aforesaid, and who shall not have obtained final judgment against such defendant taking the benefit of said provisions, shall receive any part of the proceeds of the estate of such prisoner, in the distribution thereof, to the prejudice of any person, who may have charged the same prisoner in custody upon execution.

Persons in custody on original or mesne process, entitled to the provisions as to insolvent debtors. Proviso.

Sec. 45. If a *distringas* issue in detinue, the court for good cause shewn, may direct it to be superseded, so far as it relates to the specific thing, and to be executed for the alternative price or value, if fixed in the judgment, or if the same shall afterwards be fixed by a writ of inquiry.

Distringas in detinue may be superseded as to the specific thing.

Sec. 46. Every person on whom any fine or amercement has been or hereafter shall be imposed by the judgment of any court, and who by such judgment, is directed to stand committed until the fine or amercement is paid, or who is, or shall be in custody, by virtue of any *capias pro fine*, or execution on behalf of the state, may take the oath of insolvency, in the same manner as is now directed by law, in the case of insolvent debtors, and shall thereupon be discharged out of custody: *Provided nevertheless*, That nothing herein contained, shall be so construed as to comprehend cases, when, by the judgment of any court, a certain period of imprisonment is imposed as a punishment; but in every such case, the party shall remain in custody, until such period is expired, or until he or she shall be otherwise discharged by due course of law.

Persons imprisoned for fines, &c. discharged on taking the oath of insolvency.

Not, if imprisonment is imposed as punishment.

Sec. 47. When an execution shall issue against any principal and security on any bill, bond, note, or other instrument, the sheriff, or other proper officer, shall be authorised, and he is hereby directed to levy on the property of the principal first, if he have any property in the county where the security resides:

Executions against principal and security to be levied on the property of the principal first.

Proviso.

Provided, The said security make oath, or affirmation, before some justice of the peace, that he is security upon the said bill, bond, note, or other instrument; which affidavit shall be filed by the sheriff in his office.

Proceedings against officers failing to return executions or attachments

SEC. 48. Where any writ of execution, or attachment for not performing a decree in chancery, shall come into the possession of any sheriff, coroner, or other officer, and he shall fail to return the same to the office whence it issued, on or before the return day thereof, it shall be lawful for the court, two days previous notice being given, upon the motion of the party injured, to fine such sheriff, coroner, or other officer, or the executors or administrators of such sheriff, coroner or other officer, as well as the securities of such sheriff, coroner, or other officer, and the executors or administrators of such securities, at their discretion, in any sum not exceeding five dollars *per month*, for every hundred dollars contained in the judgment or decree, on which the execution or attachment, so by him detained, was founded; and so in proportion for any greater or less sum, counting the aforesaid months, from the return day of the execution or attachment, to the day of rendering judgment for the said fine.

Proceedings against officers for retaining money collected.

SEC. 49. If any sheriff, under-sheriff, or other officer, shall make return upon any writ of *fieri facias*, or *venditioni exponas*, that he hath levied the debt, damages or costs, as in such writ, is required, or any part thereof, and shall not immediately pay the same to the party, to whom the same is payable, or to his attorney; or shall return upon any writ of *capias ad satisfaciendum*, or attachment, for not performing a decree in chancery, for payment of any sum of money, that he hath taken the body or bodies of the defendant or defendants, and hath the same, ready to satisfy the money in such writ mentioned, and shall have actually received such money of the defendant or defendants, or hath suffered, him, her or them to escape, with the consent of such sheriff, under-sheriff or other officer, and shall not immedidiately pay such money to the party, to whom the same is payable, or his attorney; or shall make any other return, upon any such execution, as will shew that such sheriff, under-sheriff, or other officer, hath voluntarily, and without authority, omitted to levy the same, or as would entitle the plaintiff to recover from such sheriff, or other officer, by action of debt, the debt, damages, or costs in such execution mentioned, and such sheriff or other officer shall not immediately pay the same to the party to whom it is payable, or to his attorney; then, or in either of the said cases, it shall and may be lawful for the creditor, at whose suit such *fieri facias*, *venditioni exponas*, *capias ad satisfaciendum*, or attachment, shall issue, upon motion made before the court from which such writ issued, to demand judgment against such sheriff, under-sheriff, or other officer, and the securities of either of them, or their legal representatives, jointly, for the money mentioned in such writ, or so much as shall be returned levied on such writs of *fieri facias*, or *venditioni exponas*, with interest thereon at the rate of thirty *per centum per annum*, from the return day of the execution, until the judgment shall be discharged; and such court is hereby authorised and required to give judgment accordingly, and to award execution thereon: *Provided*, Such sheriff or officer have two days previous notice of such motion.

Fines on executors &c. of sheriffs to affect only assets.

SEC. 50. Where any fine or penalty is inflicted on the executors or administrators of any sheriff or other officer, under authority of this act, the same shall be considered to affect only the assets in their hands, as executors or administrators.

Officer not to return execution without noting how he has executed the same, unless directed.

SEC. 51. No sheriff or other officer shall return any execution or attachment, for not performing a decree in chancery, to the office whence it issued, without noting thereon how he hath executed the same, unless by the express directions, in writing, of the plaintiff, his agent or attorney; and, if any sheriff or other officer, having no such directions, shall return such execution or attachment to the office whence the same issued, without noting or endorsing thereon how he hath executed the same, such sheriff or other officer, and his securities, and the executors or administrators of all and every of them, shall, in every such case, be liable to the like fine, and recoverable in the same manner as a recovery may be had against a sheriff failing to return an execution; and moreover, every sheriff and other officer whatsoever, in returning all executions by them levied or settled, and the moneys thereon received, or any part thereof, shall make a statement on every execution, of the amount thereof, including their own fees and commissions, and return the same, with the execution, to the office from which it issued.

On the death of officer before the sale of property taken in execution, a *venditioni exponas* may issue

SEC. 52. In all cases where the sheriff or other officer, taking property under execution, shall die before he sells such property, it shall be lawful for the clerk of the court, from which such execution issued, and he is hereby required, to issue a *venditioni exponas*, directed to the sheriff or other proper officer of the county in which the property was taken in execution; and the said sheriff or other officer, shall, under the said *venditioni exponas*, receive the property from the representatives of the former sheriff or other officer, who are hereby required to deliver such property to the said sheriff or officer, upon his producing to them the *venditioni exponas*, and executing to them a receipt for the property; and such sheriff or other officer shall proceed to sell such property, in the manner prescribed by law, in other cases of *venditioni exponas*.

Proceedings when the representatives of the officer neglect to deliver the property.

SEC. 53. If the representatives of the deceased sheriff or other officer, shall refuse or neglect to deliver to the sheriff or other officer, the property so taken under execution by their testator or intestate, upon such officer producing the *venditioni exponas*, as aforesaid; or, if after the expiration of three months from the death of the sheriff or other officer, there be no executor or administrator of the same, he shall return the truth of the case on the said writ; upon which return the plaintiff may have an execution, by virtue of which the sheriff or other officer may seize the property taken by the former sheriff or other officer, wherever it may be found, and sell the same in manner prescribed by law, under similar executions; or, the said plaintiff may move in the court from which the original execution issued, against the representatives of the deceased sheriff or other officer; upon which motion, judgment shall be entered up against the representatives of the deceased sheriff or other officer, for the amount of the execution, which came to the hands of their testator or intestate, with lawful interest thereon, and the costs of the said motion: *Provided, always*, That the execution issuing on such judgment shall be levied on the estate of the said deceased sheriff or other officer, in the hands of his representatives, who shall, in all cases, have two days previous notice of the time and place of making such motion; and the sheriff or other officer, discharging the duties aforesaid, shall have the same powers, receive the same fees and commissions, and be liable to the same penalties as in other cases.

When execution shall issue to any county in which the creditor does not reside, he shall appoint an agent in that county.

Sec. 54. And, whereas, it is unreasonable that sheriffs should be obliged to go out of their counties, to give notice to creditors at whose suit any person may be in the custody of such sheriff, or to pay money levied by execution: *Be it therefore further enacted*, That, where any execution shall be delivered to the sheriff or other proper officer of any other county, than that where any creditor resides, such creditor shall name some person, in the county where the execution is to be levied, to be his, her, or their agent, for the particular purpose of receiving the money on such execution, and for giving to, and receiving from the sheriff or other officer, any notices which may be necessary relating thereto; and payments made, and notices given to such agent, shall be as effectual, as if made or given to the creditor: and, if any creditor shall fail to appoint such agent, no judgment shall be entered against the sheriff, or other officer, for non-payment of the money mentioned in such execution, unless a demand thereof shall have been first made of such sheriff or other officer in his county, by the creditor, or some other person having written authority from him; nor, in case of failure in appointing such agent, shall the sheriff or other officer, or the prisoner be obliged to give notice previous to the discharge of such prisoner, either for want of security for his prison fees, or upon his taking the oath of an insolvent debtor; but such prisoner shall be discharged in those cases respectively, without any notice to be given to the creditor so failing.

Officer to execute deeds for lands sold.

Sec. 55. When lands and tenements shall be sold according to the provisions of this act by virtue of any writ of *fieri facias*, *capias ad satisfaciendum*, or *venditioni exponas*, or other legal process, it shall be the duty of the sheriff or other officer, by whom such sale shall be made, on the payment of the purchase money, to execute to the purchaser or purchasers, such deed or deeds of conveyance as may be necessary and proper, to vest in the purchaser or purchasers, all the right, title, interest, claim and demand of the debtor, or defendant, which he had in and to such lands and tenements, so sold, either in law or equity, *and to deliver to him or them immediate possession thereof.** (*Repealed, see Chap. 28, sec. 4.)

Sec. 56. The clerk of every court in this state, shall enter in a docket, or book to be kept by him for that purpose, a list of all executions by him issued, specifying therein the names of the parties, the amount of the judgment or decree, interest and costs, distinctly in such execution, the name of the person to whom it is delivered, to what county directed, the date when issued, and the return day thereof: and when the same is returned, shall, without delay, record the return at large, on the same page, or folio, on which the execution is entered, and shall constantly carry the said book to the court of which he is clerk. Clerks to keep a docket for executions.

Sec. 57. Nothing in this act contained, shall be construed to extend to any proceedings that may be had in consequence of any distress, made, or to be made, for any rent reserved and due, or which may hereafter become due, upon any demise, lease or contract whatsoever. Nothing in this act to extend to distresses for rent.

CHAPTER 28.

An act, to amend an act, to reduce into one the several acts concerning executions, and for the relief of insolvent debtors.

Passed January 21, 1823.

Sec. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi, in general assembly convened,* That all persons who have or shall hereafter recover any debt, damages or costs by the judgment of any court of record, within this state, may, as heretofore, prosecute writs of *fieri facias* or *capias ad satisfaciendum*, and if fifteen days shall not intervene the date of any such writ, and the next term of the court, in which judgment shall have been rendered, the plaintiff or plaintiffs, may sue out execution returnable to the term next succeeding the first term of the court thereafter. Party recovering debt, damages or costs, may prosecute writs of *fieri facias* or *capias ad satisfaciendum.*

Sec. 2. When any writ of *fieri facias* shall be levied on any lands and tenements, or when, on a *capias ad satisfaciendum*, lands and tenements shall be surrendered, to the sheriff or other officer, it shall be his duty, forthwith, to summon three disinterested respectable freeholders, of his county, who shall on oath to be administered to them by the sheriff or other officer, view the lands and tenements so levied on, or surrendered as aforesaid, and certify under their hands and seals, the fair value thereof in ready money; and if on the day appointed for the sale thereof, the same will not sell for one half of the value certified Officer to summon three freeholders, who shall certify the value of lands taken under execution. If the lands will not sell for half the value certified, the same shall be sold to the highest bidder, on a credit of twelve months. Bond to be taken.

as aforesaid, the sheriff or other officer, shall sell the same to the highest bidder, on a credit of twelve months, taking bond with good security of the purchaser, payable to the plaintiff or plaintiffs, inclusive of principal, interest and costs, expressed in the execution, with interest to the time when said bond shall be payable, if the same will sell for so much; and the bond so taken shall be returned by the sheriff or other officer to the office of the court from which the execution issued, and shall have the force and effect of a judgment; and if the obligors of such bond fail to pay the amount thereof at the time fixed for payment, the plaintiff or plaintiffs may sue for the execution thereon, against the said obligors, for the amount due, and upon such execution the sheriff or other officer shall not take any security; and the clerk shall endorse on every such execution that "no security of any kind is to be taken:" *Provided however*, The sheriff or other officer, shall not levy on, or receive in discharge of the debtor, any lands and tenements, if the plaintiff or plaintiffs, will shew to the sheriff or other officer, personal property of the defendant or defendants.

Bond when returned to have the force of a judgment.

Proviso.

If bond be quashed, obligee may have execution on the judgment.

SEC. 3. If any bond taken under the preceding section of this act, shall be at any time quashed as faulty, the obligee or obligees in such bond, besides his, her or their remedy against the sheriff or other officer, may have execution on the judgment as if no such bond had ever been taken.

Repealing clause.

SEC. 4. That the nineteenth section of an act, to which this is an amendment, and so much of the fifty-fifth section of the same act, as requires any sheriff or other officer to deliver to the purchaser, lands and tenements sold under execution, be and the same is hereby repealed.

CHAPTER 29.

An act, further to provide for the collection of fines, penalties forfeitures and amercements.

Passed June 18, 1822.

Clerks to issue execution, immediately after each term, for fines assessed.

SEC. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi, in general assembly convened*, That the clerks of the several courts in this state shall, immediately after the adjournment of every term of their respective courts, issue executions of *fieri facias*, *capias ad satisfaciendum*, or *venditioni exponas*, according to the nature of the case, and the directions of the attorney-general or district attorney, for all fines, penalties, forfeitures and amercements, which may have been assessed by said courts, or shall have accrued to the state, or any county within the state, and which shall remain due and unpaid, at the time of the adjournment of said courts respectively; and said clerks shall, within ten days thereafter, transmit a list of the executions so issued to the auditor of public

To transmit a list of executions so issued or county treasurer,* as the case may require, noting therein the name or names of the defendant or defendants, the amount of each execution, and the name of the sheriff or other officer to whom the same was delivered, so that the said auditor, or county treasurer, may be enabled severally to perform the duty required of them, in compelling such sheriff or other officer to account for and pay into the state or county treasury, as the law directs, all such fines, penalties, forfeitures and amercements, as he shall have received on any execution to him delivered as aforesaid. And every clerk, who shall fail or neglect to issue executions, and transmit a list thereof as herein required, shall forfeit and pay the sum of two hundred dollars for every such offence, to be recovered by action of debt or information, in the name of the governor of the state for the time being, or the presiding justice of the county court, as the case may require, in the circuit court of the proper county, and paid into the treasury of the state, in case the action or information be brought in the name of the governor, for the use of the state; and if in the name of the presiding justice of the county court, for the use of the county, to be paid into the county treasury of the proper county; and the clerk so failing or neglecting shall, moreover, be deemed guilty of a misdemeanor, and may for the same be removed from office: *Provided*, That if the clerk of any circuit court shall be prosecuted for a violation of the provisions of this act, such prosecution shall be commenced, heard and determined, in the circuit court of an adjoining county; and in such case, the clerk issuing the process, shall direct the same to the sheriff of the county wherein such defaulting clerk shall reside.

to the auditor and county treasurer.

(*See chap. 13, sec. 187; chap. 30, sec. 1.)

How prosecuted for neglect.

Prosecution to be in an adjoining county.

SEC. 2. If any sheriff or other officer, to whom such writ of *fieri facias*, *capias ad satisfaciendum*, or *venditioni exponas* may be directed, shall return thereon that he hath levied the fine, penalty, forfeiture or amercement, as in such writ is required, or any part thereof, or shall return upon any writ of *capias ad satisfaciendum*, that he hath taken the body or bodies of the defendant or defendants, and hath the same ready to satisfy the fine, penalty, forfeiture or amercement in such writ mentioned, and shall have suffered such defendant or defendants to escape; or, if any person be committed to the custody of such sheriff or other officer, by any of the courts of this state, until the fine, penalty, forfeiture or amercement, for which he, she or they were committed, shall be paid, and shall suffer him, her or them to escape, or if such sheriff or officer shall actually have received such fine, penalty, forfeiture or amercement, or any part thereof and shall not in every such case, immediately account to the auditor of public accounts or county treasurer, and pay the same into the treasury of the state, or county treasury where the same shall be payable by law, then, in either of the cases above specified, it shall be the duty of the auditor of public accounts or county treasurer, as the case may require, to notify the attorney-general or district attorney of the proper district, of such defaulting sheriff or other officer, who shall thereupon, on motion, at the

Sheriff, how proceeded against, when he shall return that he has levied the fine, &c. and not account therefor.

next term of the circuit court of the proper county, demand judgment against such sheriff or other officer and their securities, for the fines, penalties, forfeitures and amercements mentioned in such writ, or for so much thereof as he shall have received on such execution or commitment, or for the whole amount thereof, in case he shall have suffered such defendant or defendants to escape, as aforesaid; and the court is hereby authorised and required to give judgment accordingly, and award execution thereon, and the clerk issuing such execution, shall endorse thereon, that "*no security of any kind shall be taken.*"

Clerks to pay into the state or county treasury all fines received by them.

On failure, how proceeded against.

SEC. 3. The clerks of the several courts in this state, shall account for, and pay to the treasurer of the state or county treasurer, according to law, all fines, penalties, forfeitures and amercements, which may be assessed in their respective courts, payable into the state or county treasury; and which shall be received by such clerks, from the person or persons against whom the same may be assessed; and if any clerk shall fail or refuse to account for, and pay any money which he may receive as aforesaid, within thirty days after the same shall have been paid into his office, it shall be the duty of the auditor of public accounts or county treasurer, as the case may require, to notify the attorney-general, or district attorney of the proper district, of such defaulter, who shall thereupon, on motion to the next term of the circuit court of the proper county, demand judgment against such clerk and his securities, for the amount so received by him; and the court shall grant judgment, and award execution thereon accordingly: and the clerk so failing or refusing shall, moreover, be deemed guilty of a misdemeanor, and may for the same be removed from office: *Provided*, That such clerk shall have ten days' previous notice of such motion: *And provided also*, That when such motion shall be made against the clerk of any circuit court, the same shall be cognizable in the court of an adjoining county.

CHAPTER 30.

An act, to amend "An act, further to provide for the collection of fines, penalties, forfeitures, and amercements."

Passed January 21, 1823.

Clerks to transmit to the auditor, with the list of executions for fines, &c. statements of the returns made to the last term, with remarks thereon.

Penalty on failure.

SEC. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi, in general assembly convened*, That the several clerks of courts in this state, shall at the same time they are required to transmit a list of all executions, for fines, penalties, forfeitures and amercements, according to the first section of the act of which this is an amendment, transmit statements of the returns made by the sheriff, on executions for fines, penalties, forfeitures, and amercements, returnable to the last term of their respective courts, with remarks thereon to the auditor of public accounts; and if any clerk shall fail or neglect to transmit, such statement, he shall forfeit and pay the sum of five hundred dollars, to be recovered by action of debt, or information in the name of the governor of the state, for the time being, for the use of the state, to be paid into the treasury thereof.

Auditor to certify the failure to the attorney general, &c.

Sec. 2. It shall be the duty of the auditor of public accounts, immediately on the failure of any clerk to transmit a statement of the returns of executions, as required by the first section of this act, or to transmit a list of executions as required by the first section of the act of which this is an amendment, to certify such failure to the attorney general or district attorney, in whose district the defaulter may reside, and to require him to prosecute such defaulter according to law.

Clerks, in accounting with the auditor or county treasurer, to make out a detailed account of the fines they have received.

Sec. 3. The several clerks of courts of this state, in accounting for fines, penalties, forfeitures and amercements, which may be assessed in their respective courts, payable into the state, or county treasury, and which shall be received by such clerks from the person or persons, against whom the same may be assessed, shall render to the auditor of public accounts, or the treasurer of the county, as the case may require, a detailed account, to be ascertained by the oath of the clerk rendering the same, of all the moneys so received, exhibiting the name or names, and the amount received from such person or persons.

Certificate of the auditor or county treasurer competent evidence of clerk's default.

Sec. 4. The certificate of the auditor of public accounts or of the treasurer of a county, of the default of any clerk in transmitting a list of executions, statement of sheriff's returns, or in rendering an account of moneys received as required by this act, or the act of which this is an amendment, shall be competent evidence of any such default.

County treasurer to post up a detailed account of the state of the treasury.

Sec. 5. It shall be the duty of the county treasurers of the several counties of this state, semi-annually, thirty days previous to the sitting of the circuit court of their county, to post up at the court house door, a detailed account of the state and situation of the treasury of their county.

Penalty on failure.

Sec. 6. Every treasurer failing to comply with the requisitions of this section, shall forfeit and pay one hundred dollars for the use of the county.

Attorney general to prosecute.

Sec. 7. It shall be the duty of the attorney general or district attorney, as the case may be, to prosecute such defaulting treasurer, in any court having cognizance thereof.

CHAPTER 31.

An act, concerning the escape of debtors and other prisoners.

Passed June 7, 1822.

Process against prisoners who have escaped.

Sec. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi in general assembly convened*, That if any person committed, rendered, or charged in custody, in execution, or upon mesne process, to any county jail or prison, shall thence escape, it shall and may be lawful for any judge of the supreme court, or justice of the county court of the county where such prisoner was in custody, upon oath of such escape before him made by the sheriff, under-sheriff, jailor, or other credible person, to grant unto any one demanding the same, one or more warrants under his hand and seal, directed to all sheriffs, under-sheriffs, bailiffs, coroners and constables, within this state, reciting the cause of such prisoner's commitment, and time of his or her escape, and commanding them, and every of them, in their respective counties, to seize and retake such prisoner so escaped and going at large, and being so retaken, to convey forthwith and commit to the prison where debtors are usually kept in the county where such retaking shall be, there to be kept in safe custody, until he or she be thence discharged by due course of law; which warrant the sheriff or other officer is hereby required to obey, and to receive the prisoner into his safe custody, and to give a note to the person or persons delivering him or her, testifying the receipt of such prisoner, and shall also make return of the execution of such warrant to the court of that county or district from which the prisoner escaped: and if he or she were there in custody charged in execution, then the sheriff or other officer shall safely keep him or her, without bail or mainprize, until he or she shall make full payment and satisfaction to the plaintiff or plaintiffs, creditor or creditors, in whose name such execution was sued out, or until the judgment or judgments obtained against him or her shall be reversed or discharged by due course of law. And if such prisoner shall have been in custody upon mesne process, in any action of debt or upon the case, the sheriff or other officer to whom he or she shall be so re-committed, shall in like manner keep such prisoner in his safe custody, and make return of the execution of the warrant by which he or she was retaken, to the proper court of that county, wherein he or she was first arrested; and thereupon, it shall be lawful for the said court, upon the plaintiff's or creditor's filing his declaration, to proceed and give judgment thereon according as the truth of the case shall appear to them, in the same manner as if the defendant had appeared in the said court and refused to plead; unless such defendant shall cause special bail to be entered in the said court, and shall immediately plead to issue; and then, upon certificate under the hand of the clerk of the said court, that such bail is given, delivered to the sheriff or other officer in whose custody such defendant then shall be,

Return of process upon retaking the prisoner.

Proceedings thereon.

it shall be lawful for the said sheriff or other officer, to set at large such prisoner, and not otherwise: but where any prisoner escaped and retaken upon such warrant as aforesaid, shall thereafter be charged with treason, felony, or other crime or cause in behalf of the state; for which he or she ought to be tried in the circuit court, and shall be for such cause removed to the jail of such circuit court, every such prisoner shall be charged in the said jail of the circuit court, with all the causes wherewith he or she stood charged in the prison from which he or she was removed, until he or she be thence delivered by due course of law, in like manner as is herein before directed.

Mode of proceeding against prisoners escaping from the prison rules.

Sec. 2. When any person in execution, who shall have obtained the liberty of the prison rules by giving bond and security for the same, shall escape and go out of the same, the sheriff or other officer of the county where such prisoner was in custody, shall, and he is hereby required immediately to apply to a judge of the supreme court, or a justice of the county court, for an escape warrant to retake such prisoner, according to the directions of this act; and such sheriff or other officer shall, and he is hereby required immediately to give notice thereof to the creditor, at whose suit he was in custody, or to his attornney or agent, and shall assign over, and deliver to such creditor, or his attorney, the bond by him taken for the liberty of the prison rules, who shall be obliged to receive the same; and thereupon, it shall and may be lawful for such creditor or his attorney, to pursue the method directed by this act, for retaking such debtor upon the escape warrant aforesaid; and if he be retaken thereupon and committed to jail, the securities for his keeping the prison rules shall be discharged from their bond; or, such creditor or his attorney, shall or may, at his election, commence and prosecute an action or suit at law, against the security or securities named in the bond, for the recovery of his debt, notwithstanding he shall have applied for and obtained an escape warrant against his debtor, as aforesaid, if such debtor is not retaken and committed to jail thereupon, and the sheriff or other officer shall not be liable or answerable for the payment of the debt, for which such prisoner was in custody, unless the security or securities, named in the bond by him taken of such prisoner for the liberty of the prison rules, shall afterwards be found to have been insufficient for the payment of such debt at the time the same was taken; and no person or persons, who shall be committed on any execution issued upon a judgment obtained on such bond, shall be allowed the rules of any prison, but shall be kept in safe custody in prison, until the whole debt or damages, with interest and costs, shall be fully paid, or until they shall be otherwise discharged by due course of law.

Officer not liable unless the prisoner escaped by his consent or negli-

Sec. 3. No judgment shall be entered against any sheriff or other officer, in any suit brought upon the escape of any debtor in his or their custody, unless the jury who shall try the issue, shall expressly find that such debtor or prisoner did escape with gence, or unless he neglected to make immediate pursuit.

Debt may be maintained against officer suffering debtor in execution to escape.

the consent or through the negligence of such sheriff, or other officer or officers, or that such prisoner might have been retaken, and that the sheriff or other officer or officers neglected to make immediate pursuit: *Provided, always*, That where any sheriff or other officer shall have taken the body of any debtor in execution, and shall wilfully and negligently suffer such debtor to escape, the person suing out such execution, his executors or administrators shall and may have and maintain an action of debt against such sheriff or other officer, his executors or administrators, for the recovery of all such sums of money as are mentioned in the said execution, and damages for detaining the same; any law, custom or usage to the contrary notwithstanding,

Private persons suffering criminals in their custody, to escape.

If any private person have any prisoner in his keeping, arrested for suspicion of felony, treason or murder, and the person who is so arrested escape by negligent keeping, before he be brought to the jail, then the person from whom such prisoner so escaped, shall be liable to a fine on being found guilty on an indictment before the proper court of that county in which such escape was made.

Previous rights remedies &c. not affected by this act.

SEC. 4. All rights, remedies, fines, forfeitures and penalties, incurred previous to the passing of this act, shall remain in the same condition as if this act had never been made.

CHAPTER 32.

An act, to provide for the custody of prisoners committed under the authority of the United States.

Passed June 13, 1822.

Preamble.

Whereas, by a *resolution of the senate and house of representatives of the United States of America, in congress assembled*, It has been recommended to the legislatures of the several states to pass laws, making it expressly the duty of the keepers of their jails, to receive and safe keep therein, all prisoners committed under the authority of the United States, until they shall be discharged by due course of the laws thereof, under the like penalties as in the case of prisoners committed under the authority of such states respectively; the United States to pay for the use and keeping of such jails at the rate of fifty cents per month, for each prisoner that shall, under their authority, be committed thereto, during the time such prisoners shall be therein confined, and also to support such of said prisoners as shall be committed for offences: and whereas, it is just and reasonable to aid the United States herein, on the terms aforesaid, until other provisions shall be made in the premises:

SEC. 1. *Be it therefore enacted by the senate and house of representatives of the state of Mississippi in general assembly convened*, That all sheriffs, jailors, prison keepers, and their and each of their deputies, within this state, to whom any person or persons shall be sent or committed, by virtue of legal process issued by or under the authority of the United States, shall be, and they are hereby enjoined and required to receive such prisoners into custody, and to keep the same safely, until they shall be discharged by due course of law; and that all such sheriffs, jailors, prison keepers and their deputies, offending in the premises, shall be liable to the same pains and penalties, and the parties aggrieved shall be entitled to the same remedies against them or any of them, as if such prisoners had been committed to their custody by virtue of legal process, issued under the authority of this state.

Sheriffs and jailors to receive persons committed under the authority of the United States.

Sec. 2. The sheriff or jailor, to whose custody any prisoner shall be committed under the provisions of this act, shall be authorised to require of the marshal of the district, his deputy, or other officer, the fulfilment of the proposals of the general government with regard to rent and sustenance, at least quarter yearly in all cases, and in case of the discharge of a prisoner from custody, at the time of his discharge it shall be the duty of the sheriff or jailor to furnish the marshal with a regular statement of charges, certified on oath, together with the receipts and vouchers usual and necessary in making out his returns to the proper department of the general government.

Charges for rent and sustenance.

CHAPTER 33.

An act, to reduce into one, the several acts concerning the writ of *habeas corpus*, and to annul the remedy by writ *de homine replegiando*.

Passed June 11, 1822.

Sec. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi, in general assembly convened*, That whenever any person detained in custody, charged with a criminal offence, shall, by himself or some other person in his behalf, apply to the supreme court, or any circuit court of law, or court of chancery in this state, or to any judge thereof in vacation, for a writ of *habeas corpus ad subjiciendum*,* and shall shew, by affidavit or other evidence, probable cause to believe that he is detained in custody without lawful authority, it shall be the duty of the court or judge to whom such application shall be made, forthwith to grant the writ, which shall be issued by the clerk of the supreme, circuit court, or court of chancery, as the case may be, directed to the person in whose custody the applicant is detained, and returnable immediately before such court or judge, or any of the said courts or judges, or at such other time and place as the court or judge granting the same shall direct and appoint: *Provided*, That in all cases where it shall appear necessary, the court or judge granting the writ, shall previously require bond, with sufficient security, executed in such

Writs of *habeas corpus*, when and by whom granted.

(*See Chap. 34)

How issued, directed and returned.

Court or judge to require bond, when necessary before granting the writ.

manner, and in such reasonable penalty, as such court or judge shall prescribe, conditioned for the payment of such charges as may be awarded against the prisoner, and that he will not escape by the way. Every bond so executed shall be filed and recorded with the other proceedings as hereinafter provided for, and may be sued on in the name of the person to whom it is made payable, for the benefit of any person really interested therein.

Duty of officers and others to whom writs are directed.

SEC. 2. Whenever any such writ shall be served upon the officer, sheriff, jailor, keeper, or other person whatsoever to whom the same shall be directed, by being brought to him, or by being left with any of his under officers or deputies, at the jail or place where the prisoner is detained, he or some of his under officers or deputies, shall, within three days after the service thereof, as aforesaid, or at such time as may be expressly directed in the writ, make return thereof, and bring, or cause to be brought, the body of the prisoner unto the court or judge before whom such writ is made returnable, or in case of his absence, unto any other of the judges aforesaid, and shall likewise, especially and fully certify the true cause or causes of the commitment and detainer of the prisoner, and when he was committed. But if the place of the commitment of such prisoner be beyond the distance of twenty miles from the place to which such writ shall be made returnable, and not above one hundred miles, then such writ shall be returned within ten days, and if above the distance of one hundred miles, then within twenty days after the service thereof.

To certify the time and cause of commitment.

Penalty for disobeying the commands of the writ, &c.

SEC. 3. Every person failing to return the writ so served upon him, with the cause of the prisoner's commitment and detainer, or to bring the body of the prisoner before the court or judge, according to the command of the writ, within the time limited by this act, shall forfeit and pay to the prisoner the sum of three hundred dollars; the right to recover which shall not cease by the death of either or both of the parties; and the court or judge respectively may further punish every disobedience to such writ as a contempt, and compel obedience thereto by process of attachment.

Court or judge to discharge, admit to bail or remand prisoner and award costs,

SEC. 4. The court or judge before whom the prisoner may be brought, shall without delay, proceed to enquire into the cause of his imprisonment, and shall either discharge him, admit him to bail, or remand him into custody, as the law and the evidence shall require; and shall, moreover, either award against the prisoner the charges of his transportation, not exceeding twenty cents per mile, and the costs of the proceedings; or shall award costs in his favor, or shall award costs or charges against either party, as shall seem right. The clerk of the court, in the office of which the proceedings shall be filed and recorded, may issue execution for the costs and charges, so awarded by a judgment rendered in vacation, in the same manner as if the judgment had been rendered in term time.

Clerk may issue execution thereon.

Evidence may be received in contradiction of the return to the writ.

Sec. 5. The return made to such writ shall not hereafter be taken to be conclusive as to the facts stated therein; but it shall be competent for the judge or court, before whom such return is made, to receive evidence in contradiction thereof, and to determine the same, as the very truth of the case shall require.

Judge may compel the attendance of witnesses.

Affidavits when received in evidence.

Sec. 6. In vacation, a judge shall have the same power to compel the attendance of a witness, to give evidence upon the trial, as a court would have in term time; and whenever, either in term time or in vacation, it shall be inconvenient to procure the personal attendance of a witness, his affidavit, taken upon reasonable notice to the adverse party, may be received in evidence.

Proceedings and judgment to be entered of record.

Sec. 7. The proceedings and judgment shall, in all cases, be entered of record. If they be had in vacation, before a judge in chancery; they shall be signed by the judge, certified to the clerk, and by him inserted among the records of the chancery court, within the jurisdiction of which the judgment shall be rendered: if before a judge of the supreme court in vacation, they shall be in like manner signed, certified and entered among the records of the circuit court of law, for the county in which the judgment shall be rendered; and in every case shall be recorded by the clerk of said courts respectively, in bound books, to be kept by them for that purpose. Whenever either party shall require it, upon the trial, the court or judge shall cause to be made a part of the record all the material facts proved. The clerk shall be allowed the same fee for entering the record, as is allowed by law for copying a record, of the same number of words, which fee shall be charged to the prisoner, and taxed in the bill of costs, when costs are recovered by him.

Clerk's fee therefor.

Judgment so entered, to be conclusive until reversed.

Sec. 8. The judgment so entered of record shall be conclusive, until reversed in the manner herein provided for; and no person remanded by such judgment, whilst the same continue in force, shall be at liberty to obtain another *habeas corpus* for the same cause, or, by any other proceeding, to bring the same matter again in question, except by writ of error, or by action of false imprisonment; nor shall any person who shall hereafter be discharged from confinement by such judgment, be afterwards imprisoned or confined for the same cause, unless by the order or judgment of a court of competent jurisdiction.

Writs of error, how granted and proceedings thereon.

Sec. 9. If any party to such judgment shall feel himself aggrieved thereby, it shall be lawful for the supreme court, or any judge thereof, in vacation, on his motion, to grant a writ of error; and upon the trial, such court may reverse or affirm the judgment wholly or in part, and to cause such other judgment to be entered, and such other proceedings to be had, as the law and the right of the case may require; either awarding costs or not, at their discretion.

In case person held in service of this state or of the United States shall be discharged.

SEC. 10. If by any judgment entered as aforesaid, any person held in service of this state, or of the United States, shall be discharged, it shall be lawful for the attorney general or any district attorney, on behalf of the state, or for any attorney duly authorised on behalf of the United States, to obtain from the supreme court, or any judge thereof in vacation, a writ of error to such judgment, and to cause the same to be reversed and otherwise proceeded on, in the same manner as is allowed to the parties thereto: and if, at any time during the recess of the supreme court, the executive of this state should think that the public interset requires the immediate revision of such judgment, it shall be lawful for them to convene the said court, on any day which to them shall seem proper.

Trial of such writs of error, to have preference.

SEC. 11. The trial of all writs of error, to judgments in case of *habeas corpus*, shall have preference in the supreme court to all other trials.

Remedy by writ *de homine replegiando* annulled.

SEC. 12. The remedy by writ *de homine replegiando*, shall be, and the same is hereby annulled.

Refusal to grant a writ of *habeas corpus*.

SEC. 13. If any judge or judges, authorised by this act to grant the writ of *habeas corpus*, shall refuse or neglect to grant the same, on application as herein before directed, such judge or judges shall be deemed guilty of a high misdemeanor in office, and liable to impeachment, according to the provisions of the constitution of this state.

When persons committed for treason or felony, shall be admitted to bail or discharged, if not tried.

SEC. 14. If any person shall be committed for treason or felony, and shall not be prosecuted by indictment, and tried at the next state term, or at some special term prior thereto, of the court where the offence is properly congnizable, it shall be lawful for the court, on the last day of the term, to admit such prisoner to bail, whether the crime alledged against him or her, be punishable with death or otherwise; unless it shall appear by the oath or affirmation of one or more persons, that the attendance of the witnesses in behalf of the state could not be obtained, from unavoidable circumstances, in which case bail shall not be allowed, where the offence is punishable with death; and if such prisoner be not prosecuted by indictment, and tried at the second stated term, or some special term prior thereto, of the court where the offence is properly cognizable, he or she shall be discharged from further imprisonment, in all cases whatsoever, unless the delay was occasioned by the default, or on the application of the prisoner.

Restriction in discharging persons from prison.

SEC. 15. Nothing in this act shall extend to discharge out of prison, any person guilty, or charged with any offence committed in any other part of the United States, and who agreeably to the constitution of the United States and the laws of this state, ought to be delivered up to the executive power of the state, where the offence is charged to have been committed, nor any person charged in execution on any civil process, or suffering imprisonment under lawful judgment founded on a conviction of some criminal offence.

When persons shall not be removed out of the county on a writ of *habeas corpus*.

Sec. 16. No person shall be removed out of the county upon any writ of *habeas corpus*, within fifteen days next preceding the term of the court, where the offence with which he stands charged is cognizable, but in such case the writ shall be returned into said court, in term time, who shall hear and determine the same, as in other cases.

Removal of persons in custody for any criminal matter.

Sec. 17. No person committed, or in custody for any criminal, or supposed criminal matter, shall be removed from thence, into the custody of any other officer, unless it be by *habeas corpus*, or some other legal writ, or where the prisoner is delivered to the constable or other inferior officer, to be carried to some common jail, or where any person is sent by any judge or justice of the peace, having proper authority to some common jail, or where the prisoner is removed from one place to another within the same county, in order to his or her trial or discharge in due course of law, or in case of sudden fire or infection, or other necessity: and if any person or persons shall after such commitment as aforesaid, make out, sign, countersign, or issue any warrant for such removal, except as before excepted, then he or they shall forfeit and pay to the prisoner or party grieved, two hundred dollars, to be recovered by the prisoner or party grieved, by action of debt, before any court of competent jurisdiction.

Persons restrained of their liberty under any pretence whatever.

Sec. 18. The several provisions made by this act, for awarding writs of *habeas corpus*, shall in like manner extend to all cases where any person, not being committed or detained for any criminal or supposed criminal matter nor in execution by legal process, shall be confined or restrained of his, her or their liberty, under any mesne process in civil actions, or under any color or pretence whatsoever.

Writ of *habeas corpus* granted in case of slaves taken away and unlawfully detained.

Sec. 19. If any slave or slaves for life, shall be taken or seduced out of the possession of the master, owner or overseer of such slave or slaves by force, stratagem or fraud, and unlawfully detained in the possession of any other person, it shall be lawful for the master, owner or overseer of the slave or slaves so taken or seduced out of his, her, or their possession, to apply to the supreme court or any circuit court of law, or court of chancery in this state, or any judge of said courts respectively, in vacation, by petition, signed by the person or persons making such application, and supported by the testimony of one or more credible witness or witnesses, for the writ of *habeas corpus*: which writ, such court or judge, as the case may be, is hereby authorised and required to grant, directed to the person or persons in whose possession such slave or slaves shall be found, commanding him or them to bring before such court or judge the slave or slaves, detained in his, her or their possession, named in such writ, at such time and place as the court or judge shall appoint; and if it shall appear to the satisfaction of such court or judge, that the slave or slaves detained as aforesaid, were taken or seduced from the possession of the master, owner or overseer, by force, stratagem or fraud, and without due process of law, such court or judge shall order the possession of the slave or slaves so taken and detained, to be restored forthwith to the person or persons lawfully, and of right entitled thereto.

Punishment for disobeying such writ, and concealing or removing slave out of the state.

SEC. 20. If any person or persons being in possession of any slave or slaves as aforesaid, and shall refuse, delay or neglect to obey a writ of *habeas corpus*, after the same shall have been served according to the provisions of this act, and shall conceal or remove such slave or slaves without the limits of this state, for the purpose of avoiding legal process, the person or persons so offending, besides the penalties herein before prescribed for disobedience to the commands of such writ, shall be deemed guilty of felony, and punished as in case of felonious negro stealing, any law, custom, or usage, to the contrary notwithstanding.

Within what time persons shall be sued or impleaded for offences against this act.

SEC. 21. No person shall be sued or impleaded for any offence against this act, unless such person be sued or impleaded for the same within two years after the time wherein the said offence shall have been committed, in case the party grieved shall not be then in prison, or confined or restrained as aforesaid; and if the said party shall be then in prison, or so confined or restrained, then within two years after the decease of the person imprisoned, or so confined or restrained, or his or her delivery out of prison, or from such confinement or restraint.

CHAPTER 34.

An act, to allow judges of probate to grant writs of habeas corpus.

Passed January 16, 1828.

SEC. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi in general assembly convened*, That in all cases, the chief justices of the several county courts, or judges of probate of this state, may, in their respective counties, grant writs of habeas corpus, and in conjunction with the associate justices, give relief thereon, in the same manner as the judges of the supreme and circuit courts are by law authorised to do.

Judges of probate may grant writs of *habeas corpus*, &c.

CHAPTER 35.

An act, to provide for the support and maintenance of bastard children.

Passed June 10, 1822.

Mode of proceeding in suits for maintenance.

Sec. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi, in general assembly convened*, That when any single woman who shall be pregnant, or delivered of a child, who by law would be deemed and held a bastard, shall make complaint to any one or more justices of the peace for the county where she may be so pregnant or delivered, as aforesaid, and shall accuse any person of being the father of such child, it shall be the duty of such justice or justices to issue a process directed to the sheriff, coroner, or any constable of such county, against the person so accused as aforesaid, and cause him to be brought forthwith before him or them; and upon his appearance, it shall be the duty of said justice or justices, to examine the said female in the presence of the man alleged to be the father of the child, touching the charge against him; and if said justice or justices shall be of opinion, that sufficient cause appears, it shall be his or their duty, to bind the person so accused, in bond with good and sufficient security, to be and appear before the next county court, to be holden for said county, and in the mean time to be of good behaviour.

Issue to be tried in the county court.

Sec. 2. The county court aforesaid, at their said next term, shall have full and complete cognizance and jurisdiction of said charge of bastardy; and shall cause an issue to be made up, "whether the reputed father is the real father of the child or not," which issue shall be tried by a jury: *Provided, nevertheless*, That the inquiry shall not be *exparte*, but the reputed father shall have a right to appear by himself, or counsel, and controvert by all legal evidence, the charge alleged against him.

Inquiry not to be *exparte*.

Jury may be summoned and empanneled in the same manner as *tales* jurors.

Sec. 3. Whenever a case of bastardy shall be returned to the county court under the authority of this act, the said court shall have power and authority, if necessary, to cause a jury to be summoned and empanneled, in the same manner as *tales* jurors are summoned, for the purpose of trying the issue of bastardy, if the defendant or reputed father shall demand the same.

Judgment against the defendant.

Sec. 4. If the issue be found against the defendant or reputed father, then he shall be condemned by the judgment of said court, to pay, not exceeding seventy-five dollars, at the discretion of said court, yearly, for ten years, towards the support, maintenance and education of said child; and the said reputed father shall give bond, with good and sufficient security, to be approved by the court, for the due and faithful payment of said sum of money, at the times therein named, which shall be made payable to the said court, and laid out and appropriated under their special order and direction, from time to time made, so that the same be not paid to the mother of said child; which said bond shall be and hereby is declared to have the same force, validity and effect, as a judgment of said court, upon which executions may issue, as often as money thereon shall become due and payable: *Provided, however,* That if said child should not be born alive, or being born, should die at any time, and that fact suggested upon the record of the county court, then, and from that time, the bond aforesaid shall be void.

Judgment in favor of the defendant.

SEC. 5. If upon the trial of the issue aforesaid, it should be found by the jury against the woman, or that such bastard child is not the child of the reputed father, then the judgment of the court shall be, that the defendant or reputed father be discharged, and that the woman making the complaint, shall pay all costs occasioned thereby.

Effect of intermarriage between the parties

SEC. 6. If the mother of any bastard child, and the reputed father, shall at any time after its birth, intermarry, the said child shall, in all respects, be deemed and held legitimate, and the bond aforesaid be void.

County court to appoint a guardian.

SEC. 7. It shall be the duty of the county court to appoint a guardian or guardians to said child; and upon his, her or their entering into bond, with good and sufficient security, to be approved by the court, for the faithful performance of his, her or their duty, the money shall be paid over by the court, to such guardian or guardians.

CHAPTER 36.

An act, concerning divorces and alimony.

Passed June 14, 1822.

Court of chancery to have jurisdiction of all causes of divorce.

SEC. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi in general assembly convened,* That the court of chancery shall have jurisdiction of all causes of divorce by this act directed and allowed: *Provided,* The party applying for such divorce, be a resident of this state, and shall have resided therein at least one year next preceding the filing of his or her bill for such divorce.

Course of proceeding.

SEC. 2. The like process, and course of practice and proceedings shall be had and pursued in causes of divorce, as is usually had and pursued in other causes in chancery, except that the answer of defendants shall not be under oath.

Causes of divorce from the bond of matrimony.

SEC. 3. Divorces from the bond of matrimony shall be decreed, in case the parties are within the degrees prohibited by law, in cases where either party is naturally impotent, and case of adultery in either of the parties, and also, for wilful, continued, and obstinate desertion for the term of five years; but the decree or sentence of divorce in such cases, shall not render illegitimate the issue born during such marriage.

In case either party had another wife or husband at the time of the marriage.

SEC. 4. Divorces from the bond of matrimony shall also be decreed where either of the parties had another wife or husband living at the time of such second or other marriage; and all marriages, where either of the parties shall have a former wife or husband living at the time of such marriage, shall be invalid from the beginning, and absolutely void, and the issue thereof shall be deemed to be illegitimate, and subject to all the legal disabilities of such issue.

When a divorce shall not be decreed for adultery.

SEC. 5. If it appear to the court that the adultery complained of, is occasioned by collusion of the parties, and done with intention to procure a divorce, or that both parties have been guilty of adultery, then no divorce shall be decreed.

Cause of divorce from bed and board.

SEC. 6. Divorce from bed and board shall be decreed for extreme cruelty in either of the parties; but if it appear that the cruelty complained of, is occasioned by the collusion of the parties, and done with intent to obtain such divorce, then no divorce shall be decreed.

Order of the court respecting alimony, maintenance, &c.

SEC. 7. When a divorce shall be decreed on account of the parties being within the prohibited degrees, or for the cause of adultery, or extreme cruelty, the court shall and may, in every case, take such order, touching the care and maintenance of the children of that marriage, and also, touching the maintenance and alimony of the wife, or any allowance to be made to her, and if any, the security to be given for the same, as from the circumstances of the parties and nature of the case, may be fit, equitable and just.

Persons within the prohibited degrees cohabiting after divorce, punishable for incest.

SEC. 8. If any persons who shall be divorced on account of their being within the degrees prohibited by law, shall, after such divorce, cohabit together, such persons so offending, shall be liable to all the pains and penalties provided by law against incest.

Penalty for cohabiting after divorce for prior marriage or adultery.

SEC. 9. If any persons shall cohabit or live together in the same house, after a divorce for the cause of prior marriage or adultery, such persons so offending, shall be liable to all the pains and penalties provided by law against adultery.

Mode of proceeding when the party against whom complaint is made, is absent from the state.

SEC. 10. In all cases of divorce, if the party against whom complaint is made shall reside out of the state, or have removed, or shall, after the cause of complaint has arisen, remove out of the state, so that process cannot be served, or if served, the party cannot be compelled to appear and answer or plead, it shall and may be lawful for the court, on bill filed, and due proof that the defendant resides out of the state, or hath removed as aforesaid, to order a hearing on the facts charged in the said bill, and thereupon, to pass a decree in the same manner, as if the defendant had appeared, and were present in court: *Provided, always*, That a copy of the said order for hearing, be published in one of the public newspapers of this state, for the space of three months at least, before the day appointed for the said hearing.

Decree not to take effect until sanctioned by the general assembly.

SEC. 11. No decree for divorce from the bond of matrimony shall take effect, until the same shall be sanctioned by a law or resolution, passed by two-thirds of both branches of the general assembly.

CHAPTER 37.

An act, to reduce into one the several acts, and parts of acts, relating to dower.

Passed June 13, 1822.

Widow claiming her dower, how to proceed. (*See Chap 9 Sec. 45—48)

SEC. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi, in general assembly convened*, That when any person shall die intestate, or shall make his last will and testament* and not make therein any express provision for his wife, by giving and devising unto her, such part or parcel of his real and personal estate, as shall be fully satisfactory to her, such widow may signify her dissent thereto, in the orphans' court of the county wherein such last will and testament is proved and recorded, at any time within six months after the probate of such will, and then, and in that case, she shall be entitled to dower, in the following manner, to wit:—One third part of all the lands, tenements and hereditaments, of which her husband died seized and possessed, or had before conveyed, whereof said widow had not relinquished her right of dower, as provided for by law; which third part shall be, and inure to her proper use, benefit and behoof, for and during the term of her natural life; in which said third part shall be comprehended the dwelling house in which her husband shall have been accustomed most generally to dwell, next before his death, together with the offices, out-houses, buildings and other improvements thereunto belonging or appertaining; but, if there be no child or children of such testator or intestate, nor descendants of them, then the widow shall have as her dower, one half of his real estate as aforesaid, for and during the term of her natural life: *Provided*, That if it should appear to the orphans' court to which application is made, that the whole of the said dwelling house, out-houses, buildings and other improvements thereunto appertaining, cannot be applied to the use of the widow, without manifest injustice to the children or other heirs; then, and in that case, such widow shall be entitled to such part only of said buildings and other improvements, as the court may deem reasonable and just.

To what real estate she shall be entitled as a dower.

To what personal estate.

Sec. 2. When a husband dies intestate, or shall make his last will and testament, and not make provision therein for his wife as aforesaid, she shall be entitled to share in the personal estate in the following manner, to wit: If there be no children, or if there be but one child, in that case she shall be entitled, out of the residue left after paying the debts of the deceased, to one half, but if there be more than one child, in that case, she shall be entitled to a child's part in either case in fee simple.

Petition for dower, where to be filed, etc.

Commissioners to be summoned to allot and set off lands and put widow in possession.

To allot and set off her portion of personal estate.

Sec. 3. It shall be lawful for any widow claiming dower, to file her petition in the orphans' court of the county where her husband shall have usually dwelt, next before his death, setting forth the nature of her claim, and particularly specifying the lands, tenements and hereditaments of which she claims dower, and praying that her dower may be allotted to her: *Whereupon*, the said court shall issue a writ, directed to the sheriff, commanding him to summon five discreet freeholders as commissioners, connected with the parties neither by consanguinity or affinity, and entirely disinterested; who upon oath, which oath the sheriff is hereby authorised to administer, shall allot and set off by metes and bounds to the said widow, one half in case there be no child or children, or descendants of them, and in case there be a child or children, or descendants of them, one third part, according to quantity and quality of all the lands, tenements and hereditaments in said county, of which the husband died seized and possessed, or had before conveyed, whereof the widow had not relinquished her right of dower, according to law, and shall put her in possession of the same; which possession shall vest in her an estate for her natural life; and where she has claim to dower in lands lying in different counties, she may proceed in the orphans' court of the county where such lands lie, and make recovery in manner as is herein directed; and the sheriff and commissioners shall also, at the same time, allot and set off to such widow, her portion of the personal estate of which her husband died possessed, and to which by this act, she is entitled; which part or portion, shall be and inure to such widow, her heirs, executors, administrators and assigns forever.

Proceedings on petitions for dower, to be in a summary way.

Notice to be given to the executor or administrator.

Sec. 4. The proceedings upon such petitions for dower, shall be in a summary way, and the court shall, at the first term when such petition is filed, proceed to hear and determine the same, and make such order or decree in the premises, as shall be just and equitable, according to the rights of the petitioner, and others interested in the distribution of the estate of the testator or intestate: *Provided*, That the party petitioning for dower shall give ten days notice to the executor or administrator, by serving him with a copy of said petition; and where, there is no executor or administrator, or where the widow shall be the executrix or administratrix, then she shall give the said notice by advertisement in one of the newspapers published in this state, nearest to the residence of such widow, to be published four times in succession.

Widow may retain possession of dwelling house and plantation, until her dower is assigned.

SEC. 5. It shall be lawful for the widow to retain the full possession of the dwelling house, in which her husband most usually dwelt, next before his death, together with the out-houses, offices or improvements, and plantation thereunto belonging, free from molestation, and rent, until she shall have her dower assigned her.

Lands purchased from the U. States, for which the payment is not completed, subject to dower.

SEC. 6. When any person shall die possessed of lands purchased of the United States, the payment for which has not been completed, such lands shall be subject to the dower of the widow, in the same manner as if the title had been complete, at the time of the death of her husband.

Trust estates, subject to dower and courtesy.

SEC. 7. Where any person to whose use, or in trust for whose benefit another is, or shall be seized of lands, tenements or hereditaments, hath, or shall have such inheritance in the use or trust, as that if it had been a legal right, the husband or wife of such person would thereof have been entitled to courtesy, or dower, such husband or wife shall have and hold, and may by the remedy proper in similar cases, recover courtesy or dower, of such lands, tenements or hereditaments.

CHAPTER 38.

An act, concerning the partition of lands held by coparceners, joint tenants, and tenants in common.

Passed June 10, 1822.

Application for the partition of land.

Three commissioners to be nominated;

Advertisement of such nomination.

SEC. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi, in general assembly convened,* That any person being a coparcener, joint tenant, or tenant in common, in any tract or tracts of land within this state, may at any time apply to a judge of the supreme court, the chancellor of the state, or the presiding justice of the county court of any county in this state, wherein such lands may lie, for a partition of such tract or tracts of land; whereupon, the said judge, chancellor, or justice, shall ascertain the number of equal shares or parts, in which such tract or tracts were, or at the time of such application, are held by the original coparceners, joint tenants, or tenants in common, and shall nominate three respectable freeholders not interested in the said land, as commissioners to make partition of such tract or tracts into as many parts or shares as the same was originally held; and the said judge, chancellor, or justice, shall thereupon order an advertisement to be inserted in one of the public newspapers of this state, and in such other public newspapers, or places, as the judge, chancellor or justice aforesaid, shall direct, for two months successively, prior to the day mentioned in said advertisement, on which the commissioners are to be appointed, in the form, or to the effect following:

"By ——— esquire, judge of the supreme court, chancellor of the state, or presiding justice of the county court, of the county of ——— (as the case may be) notice is hereby given, that on application to me, by ———, of ———, who claims an undivided ——— part of all that tract of land, (giving a description of the tract or tracts intended to be divided,) I have nominated A B, C D, and E F, commissioners, to divide the said tract (or tracts) of land into equal shares or parts; and unless proper objections are stated to me at ———, on the ——— day of ——— next, the said A B, C D, and E F, will then be appointed commissioners, to make partition of the said lands, pursuant to an act, entitled "an act, concerning the partition of lands held by coparceners, joint tenants, and tenants in common."

"Given under my hand this ——— day of ———."

Appointment of commissioners when no objection is made to the persons nominated.

SEC. 2. If no objection be made before the said judge, chancellor or justice, (as the case may be) on the day appointed by him for the purpose, to the persons nominated as commissioners, then the said judge, chancellor or justice shall, in writing under his hand and seal, appoint the persons so nominated to be commissioners, to divide the said land pursuant to the directions prescribed in this act; and the said judge, chancellor, or justice, shall, in the said writing, describe the tract or tracts to be divided, and direct the number of parts or shares into which the same is to be allotted; and if objection be made to the persons nominated as commissioners, or any of them, the said judge, chancellor or justice, shall then proceed to hear and determine such objection; and in case he find it well founded, then he shall appoint under his hand and seal, other fit and disinterested persons, in the room of such as he may think proper to reject.

When objection is made.

Commissioners to be sworn.

SEC. 3. The commissioners so appointed, before they proceed to the execution of the powers and authority vested in them by this act, shall be severally sworn or affirmed, before a judge of the supreme court, the chancellor, a justice of the county court, or a justice of the peace of the county, that they will honestly, faithfully and impartially make the partition intended, and perform the duties, trust, and services, required of them by this act, to the best of their skill, knowledge and judgment.

To cause the land to be surveyed in their presence and divide the same into shares.

SEC. 4. The commissioners shall cause a survey to be made in their presence, of the tract or tracts to be divided, and shall then proceed to divide the same into the number of parts or shares directed by the said judge, chancellor or justice, in the writing containing their appointment, each part or share to contain one or more lots, as the commissioners may think proper, they having due regard in the partition, to the situation, quantity, quality, and advantages of each part or share, so that they may be equal in value, as nearly as may be; and if the bounds of any tract or tracts, so to be divided, shall be controverted, the commissioners are hereby directed, if such controverted part is valuable, to separate the same from the part not controverted, and make partition of the tract or tracts, in such manner that a proportion of the controverted part may be allotted to each share, as well as a portion of the part not controverted. And the said commissioners previous to the said survey, shall administer an oath or affirmation to the surveyor and chain bearers, that they will well and truly perform their respective duties honestly and impartially; which oath or affirmation, any one of the said commissioners is hereby empowered to administer.

To administer an oath to the surveyor and chain carriers.

To make field book specifying the bounds and number of each lot, and a map on which each lot shall be laid down and numbered.

Sec. 5. The said commissioners shall number the several parts or shares by them laid off; from number one progressively, and shall, in the same manner, number each lot in the several shares, if the same contain more than one lot, and shall make a true field book, specifying the bounds and numbers of each lot, and also a map or maps of the tract or tracts on which the several shares or lots shall be laid down and numbered, and shall keep an exact and particular account of the time expended in the execution of their duties, and of the money due for the same; and also of all expenses accrued for surveying or otherwise, agreeably to the directions of this act; and the said commissioners shall thereupon give notice by advertisement in manner aforesaid, for three weeks successively, that on a certain day, (not less than one month from the date of such notification) and at a place therein named, attendance will be given, and an allotment by ballot take place, of the several parts or shares of the tract or tracts therein described, to the original coparceners, joint tenants, and tenants in common, their heirs or assigns.

To keep account of time and expenses.

To give notice of the time and place for allotment of the shares.

On application the judge, etc. shall attend.

Sec. 6. On application made to the said judge, chancellor or justice, by any one of the parties to the partition intended to be made, the said judge, chancellor or justice, shall attend at the time and place specified in the advertisement of the commissioners, and shall, with the assistance of the said commissioners, proceed to allot the several parts or shares of the tract or tracts intended to be divided, in the manner hereinafter mentioned; but if no application shall be made to the said judge, chancellor or justice, for his attendance, then the said commissioners shall, on the day appointed for the purpose, proceed in a public manner to number as many tickets as there are shares of land marked on the map, which shall be put in a box, and the names of the original coparceners, joint tenants, or tenants in common, shall be put in separate tickets into another box, when a person appointed by the said judge, chancellor or justice, or commissioners, shall proceed to draw a ticket of the names, and then a ticket of the numbers, and so proceed until all the tickets are drawn, and the share on the map bearing the number of the ticket drawn next after drawing the ticket with the name, shall be the separate and divided share of that original coparcener, joint

Manner of making the allotment.

tenant, or tenant in common, his or her heirs or assigns, in the land so divided; of which balloting the said judge, chancellor or justice, or commissioners, shall make a full and ample certificate, under his or their hands and seals, specifying particularly, the time, place, and manner of balloting, and the said allotment of the shares.

Persons able to give any necessary information, may be required to attend, testify, &c.

SEC. 7. The said judge, chancellor, or justice, or the said commissioners, are hereby authorised, as the case may require, to issue his or their precept or precepts, under his or their hands and seals, commanding such person or persons, who are able to give any necessary information, to come before him or them, when and where he or they may direct, to testify by oath or affirmation, such acts, matters or things, as it may be necessary for the said judge, chancellor or justice, or commissioners, to investigate in the execution of the trust, duties, and services required of them by this act, and to bring with him or them, all such patents, surveys, maps, records, deeds, or other writings, as may be necessary to be examined by the said judge, chancellor or justice, or commissioners.

The commissioners to transmit to the judge &c. their appointment, oath, map, field book and accounts.

When recorded to be good evidence of such partition.

SEC. 8. The commissioners shall transmit the writing containing their appointment, and oath or affirmation, properly certified by the person administering the same, and the map, and field book, and also their accounts, to the judge, chancellor or justice, from whom they received their appointment, or in case of his death resignation or removal, then to any other judge, chancellor or justice of the same court, who after inspecting the same, shall order the said instruments, excepting the account of expenses, to be recorded in the clerk's office of the circuit court, or in the clerk's office of the county court, where the lands lie, which shall be good evidence of such partition; which partition shall be as valid and effectual in law to divide and separate the said lands, as if the same had been made on writs of partition, according to the course of the common law.

Compensation of judge &c. commissioners, surveyor, chain bearers and witnesses.

SEC. 9. The said judge, chancellor or justice, shall be allowed for the services required by this act, at the rate of two dollars and fifty cents per day each, while employed in the said business; and the said commissioners at the rate of two dollars a day each, and the said surveyor at the rate of four dollars a day, and the chain bearers and witnesses, at the rate of one dollar per day each, while employed or attending on said business.

Death of any commissioner before the duties are completed.

SEC 10. In case of the death, resignation, neglect or refusal, of any of the commissioners appointed by virtue of this act, before the trust, duties and services hereby required of them shall be completed, then the said judge, chancellor or justice, or in case of his death, resignation or removal, any other such judge, chancellor or justice shall by writing under his hand and seal appoint another commissioner or commissioners, who shall be vested with the like powers and authority, as if he or they had been originally appointed.

Expenses to be divided and paid by those to whom the shares are allotted.

Sale of land in default of payment.

SEC. 11. After the said judge, chancellor, or justice, shall have ascertained the whole expense of such partition, he shall divide the same equally according to the several parts or shares, which shall be paid by the persons to whom such shares were allotted, their heirs or assigns, within four weeks after the same shall be ascertained; or in default of payment of such expense, the said judge, chancellor or justice, is hereby authorised, where no other property is to be found, to direct a sale to be made by the commissioners, of so much of those parts or shares deficient in paying the expense, as will be sufficient to pay their respective proportions thereof, together with the expenses accruing on such sale; and the said judge, chancellor or justice, shall direct the same to be sold by the said commissioners at public auction, to the highest bidder, whereof four weeks notice shall be previously given in one of the said newspapers, and at three of the most public places in the county in which the lands lie: and the said commissioner's deed to the purchaser, shall pass as good a title for the separate enjoyment of the same, as if all the owners and claimants of shares of the entire tract divided, had joined therein.

The part of a joint tenant dying first, shall not accrue to the survivors.

SEC. 12. If partition be not made between joint tenants, the parts of those who die first shall not accrue to the survivors, but shall descend or pass by devise, and shall be subject to debts, charges, courtesy or dower, or transmissible to executors or administrators, and be considered to every other intent and purpose, in the same manner as if such deceased joint tenants had been tenants in common.

Any coparcener, etc. dissatisfied with partition may have the same re-examined by bill in equity.

SEC. 13. Any coparcener, joint tenant or tenant in common, who shall be dissatisfied with any partition made according to the provisions of this act may have the same re-examined by bill in equity in the superior court of chancery, and the court, on a final hearing of the cause, may either affirm the proceedings of the commissioners, or decree a new partition by other commissioners in like manner, if it shall satisfactorily appear that injustice was done to the complainant in such cause.

Nothing herein contained to defeat the claims of others.

SEC. 14. Nothing herein contained shall be construed so as to injure, prejudice, defeat or destroy, the estate, right or title, of any person or persons, claiming such tract or tracts of land, or any part thereof, or any thing therein by title, under any other person or persons, or by title paramount to the title of such coparceners, joint tenants, or tenants in common, among whom partition may have been made.

CHAPTER 39.

An act, concerning forcible entries and detainers.

Passed June 18, 1822.

Sec. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi in general assembly convened,* That none shall enter into any lands or tenements, but in case where entry is given by law; and in such case, not with strong hand, nor with multitude of people, but only in a peaceable manner. And none who shall have entered in a peaceable manner shall hold the same afterwards, against the consent of the party entitled to the possession thereof.

Prohibition of unlawful or forcible entries and unlawful detainers.

Sec. 2. If any shall enter, or shall have entered, into any lands or tenements, in case where entry is not given by law; or if any shall enter, or shall have entered into any lands or tenements, with strong hand, or with multitude of people, even in case where entry is given by law, the party turned out of possession by such unlawful, or by such forcible entry, by whatever right or title he held such possession, or whatever estate he held or claimed, in the lands or tenements, of which he was so dispossessed, shall at any time within three years thereafter, be entitled to the summary remedy herein provided.

Remedy for persons dispossessed by unlawful or forcible entry.

Limitation.

Sec. 3. If any shall enter, or shall have entered in a peaceable manner, into any lands or tenements, in case where such entry is lawful; and after the expiration of his right, shall continue to hold the same, against the consent of the party entitled to the possession, the party so entitled, whether as tenant of the freehold, tenant for years, or otherwise, shall be entitled to the like summary remedy, at any time within three years after the possession shall so have been withheld from him against his consent.

Remedy for party injured by unlawful detainer.

Limitation.

Sec. 4. The party so turned out of possession, or so held out of possession, may exhibit his complaint before any justice of the peace for the county or corporation within which such lands or tenements may lie, in the following form or to the following effect, that is to say: "——— county (or corporation of ———,) to wit: A. B. of the said county, (or corporation) complains, that C. D. hath unlawfully (or forcibly) turned him out of possession, or unlawfully and against his consent, withholds from him the possession of a certain tenement, containing by estimation, —— of land with the appurtenances, lying and being in the county (or corporation) aforesaid, whereof he prays restitution of the possession. A. B. plaintiff."

Complaint may be exhibited to a justice of the peace.

Form of complaint.

Sec. 5. Such complaint shall be verified by the oath or affirmation of the plaintiff, certified at the foot thereof, after the following manner: "—— county (or corporation of ——) to wit: This day the above named A. B. made oath (or affirmed) before

To be verified by oath.

me, a justice of the peace for said county (or corporation) that he verily believes the allegations of the above complaint to be correct and true. Given under my hand this —— day of ——.

E. F."

Justice of the peace to issue his warrant

Sec. 6. The justice before whom such complaint shall be made, shall thereupon issue his warrant, to the following effect: "—— county (or corporation of ——,) to wit: Whereas A. B. hath made complaint on oath, (or affirmation) before me, a justice of the peace for said county (or corporation,) that C. D. hath unlawfully (or forcibly,) turned him out of possession, (or unlawfully and against his consent, holds him out of possession,) of a certain tenement —— of land, with its appurtenances, lying and being in the said county (or corporation,) and hath prayed restitution of the possession thereof; These, are, therefore in the name of the state of Mississippi, to require you to summon the said C. D. to appear at the court house of your county (or corporation,) on the —— day of ——, before the justices of the county (or corporation,) aforesaid, to answer the complaint aforesaid; and also to require you to summon at least eighteen good and lawful men of your county, being freeholders therein, and not of kin to either party, then and there to be attendant upon the said justices, as jurors to try the complaint aforesaid. You are furthermore required to give notice of this warrant, to at least two other justices of the peace for the said county, (or corporation,) and to request their attendance at the time and place aforesaid; and have then there this warrant. Witness my hand and seal this —— day of ——, E. F." (seal.)

Defendant and jurors to be summoned

Two justices of the peace to be notified.

Warrant, how to be directed, executed and returned.

Sec. 7. The warrant aforesaid shall be directed to the sheriff or coroner of the proper county, as the case may require; shall be made returnable on a day certain, not less than ten, nor more than twenty days after its date; and shall be forthwith executed by the proper officer, who shall make due return to the justices at the time and place therein mentioned, of the manner in which he shall have executed the same.

To be served on the defendant eight days before return day.

Sec. 8. The said warrant shall be served on the defendant at least eight days before the return day, either by delivering to him a copy thereof, or if he cannot be found, by delivering a copy to any white person of his family, above the age of sixteen years, at his usual place of residence, or, if no such person be found, then by setting up a copy on some conspicuous place on the tenement in the warrant mentioned.

Subpœnas for witnesses; by whom to be issued.

Sec. 9. At any time after such warrant shall have been issued, it shall be lawful for the justice issuing the same, or any justice of the peace for the county (or corporation,) or for the clerk of the county or corporation court, as the case may be, upon the application of either party, to issue subpœnas for witnesses, requiring them to attend at the court house, before the justices, at the time appointed as aforesaid, to give evidence on the trial.

Any subpœna so issued, shall be executed in the same manner, and, to all intents and purposes, shall have the same force and effect, as a subpœna issued according to law, in a cause depending in a circuit court.

And how executed.

Sec. 10. It shall be the duty of the justices notified as aforesaid, and of the justice who shall have issued the warrant to attend at the court house on the day therein specified, for the purpose of holding a court, for the trial of the complaint aforesaid; for which purpose, such justices or any two of them, or any two or more justices of the county or corporation, as the case may be, shall constitute a court. Such court shall be considered a court of record; they shall have power to issue all proper process to bring before them witnesses, or other persons whose attendance may be lawfully required by them; and they may adjourn from day to day, and from time to time, until the trial shall be ended. The sheriff or coroner, as the case may require, shall be attendant upon them, and execute their orders. And the clerk of the county, or corporation court, as the case may be, shall attend them, and shall record their proceedings in the proper books of his office, and file away and preserve the complaint and warrant aforesaid, with all other papers exhibited on the trial.

Two or more justices to constitute a court.

To be considered a court of record.

Sheriff or coroner to attend.

Also the clerk of the county or corporation court.

Sec. 11. When the justices shall have so met, and formed a court, on the day and at the place aforesaid, if it shall appear to them that the defendant has been duly served with the warrant agreeably to the requisitions of this act, they shall proceed, without further pleadings in writing, to empannel a jury for the trial of the complaint aforesaid. The jury shall be composed of any twelve of the freeholders, summoned as aforesaid, to be selected by lot, to whom neither party hath any legal exception; or, if a sufficient number of such freeholders, to whom neither party hath any legal exception, be not attending, the deficiency shall be made up of by-standers, being freeholders of the county or corporation.

Proceedings in court.

A jury of twelve freeholders to be empanneled.

Sec. 12. When the jury shall have been so empanneled, they shall be charged on oath, in the following manner, that is to say: If the complaint be of a forcible entry, or of an unlawful entry, they shall be charged thus: "You shall well and truly try, whether the defendant C. D. at any time within three years next before the exhibition of the complaint filed by the plaintiff in this case, did forcibly (or unlawfully) enter upon the tenement in the said complaint mentioned, and turn the said plaintiff out of the possession thereof; and whether the said defendant continued to hold the possession thereof at the time of the exhibition of said complaint. And you shall find a true verdict thereupon according to the evidence: So help you God." Or if the complaint be of an unlawful detainer against the consent of the plaintiff, they shall be charged thus: "You shall well and truly try whether the defendant C. D. against the consent

How charged in case of forcible or unlawful entry.

In case of unlawful detainer.

of the plaintiff, holds possession of the tenement mentioned in the complaint filed in this cause; whether the said defendant hath so held possession thereof, for three years next before the exhibition of the said complaint; and whether the plaintiff hath the right of possession in the tenement aforesaid: And you shall find a true verdict thereupon according to the evidence: So help you God."

Duty of the justices on the trial.

SEC. 13. The jury being so empanneled and charged, the justices shall then admit before them all legal evidence which shall be offered, as well on the part of the defendant, as on the part of the plaintiff; shall suffer each party to be heard by counsel; shall decide all questions of law which shall be properly submitted to them, in the course of the trial; shall admit bills of exception to their opinions; and shall, in all respects, conduct the trial according to the usages of courts of law in this state.

Form of verdict in case of forcible or unlawful entry.

SEC. 14. When the jury shall have unanimously agreed upon their verdict, they shall find the same in the following form, or to the following effect, that is to say: In cases of forcible entry, or unlawful entry, thus: "We, the jury, find that the defendant did, (or did not) within three years next before the exhibition of the complaint filed by the plaintiff in this cause, forcibly (or unlawfully) enter upon the tenement, in the said complaint mentioned, and turn the plaintiff out of possession thereof; and that the said defendant did (or did not) continue to hold the possession thereof, at the date of the said complaint." Or in case of unlawful detainer against the plaintiff's consent, thus: "We, the jury, find that the defendant did, (or did not) at the time of the exhibition of the complaint filed in this cause, hold possession of the tenement therein mentioned, against the consent of the plaintiff, that the said defendant hath, (or hath not) so held possession thereof against the consent of the plaintiff, for three years next before the exhibition of said complaint; and that the plaintiff hath, (or hath not) the right of possession in the tenement aforesaid."

In case of unlawful detainer.

Judgment for plaintiff.

SEC. 15. If the verdict so found, on a complaint of a forcible entry, or of an unlawful entry, shall ascertain that such forcible entry, or unlawful entry, as the case may be, whereby the plaintiff was turned out of possession, was made by the defendant within three years before the exhibition of the complaint, and that the defendant's possession continued at the time of exhibiting the complaint; or if the verdict found as aforesaid, upon a complaint of unlawful detainer against the consent of the plaintiff, shall ascertain that the defendant, at the time of the exhibition of said complaint, held the possession of the tenement therein mentioned, against the consent of the plaintiff; that the said defendant had not so held, against the consent of the plaintiff, for three years next before the exhibition of said complaint; and that the plaintiff hath the right of possession, in the tenement aforesaid; then, in either of these cases, the justices shall render judgment in favor of the plaintiff, that he recover possession of the tenement aforesaid, with full costs, and shall award a writ of *habere facias possessionem.*

Writ of *habere facias possessionem.*

Sec. 16. If the verdict found as aforesaid, in either of the said cases, shall be in favor of the defendant, the justices shall render judgment against the plaintiff, that his complaint be dismissed, and that the defendant recover of him full costs.

Judgment for defendant.

Sec. 17. The judgment of the justices rendered as aforesaid, either in favor of the plaintiff, or in favor of the defendant, shall be executed in the same manner, as if it had been the judgment of any other court of record in this state: and either party thinking him or herself aggrieved thereby, may appeal to the circuit court of the county, which appeal shall be granted only after judgment, on the appellant entering into bond and security in double the amount of the costs of the suit before the justice, who shall approve the security, payable to the opposite party; and thereupon the justice shall send up to such circuit court, all the papers, records and proceedings in the case, and cause the same to be delivered to the clerk of the circuit court to be docketed for trial; and the said circuit court shall empannel a jury, and hear and determine the same, *de novo*, according to the provisions of this act, and the rules of said court, except that the same shall be tried out of course, and at the first term after such removal.

Judgment, how executed.

Party aggrieved may appeal to the circuit court.

Papers to be sent to the circuit court and trial had at the first term.

Sec. 18. No judgment rendered as aforesaid, either for the plaintiff or defendant, shall bar any action of trespass, or any writ of ejectment, or writ of right, between the same parties, respecting the same tenement; nor shall any verdict found as aforesaid, be held conclusive of the facts therein found, in any such actions of trespass, ejectment, or writ of right.

Judgment not to bar trespass, ejectment or writ of right.

Sec. 19. Every juror summoned to attend the justices aforesaid, and failing to attend without sufficient cause therefor, shall be liable to a fine not exceeding twenty dollars, to the use of the state, which may be imposed by the justices aforesaid, or by the circuit court of the county.

Fine on jurors failing to attend.

Sec. 20. The sheriff or other proper officer, shall be allowed for his services in executing and returning the warrant aforesaid, the sum of four dollars; and for attending the justices during the trial, the sum of two dollars for each day; all other fees of officers for services rendered, in relation to the proceedings and trial aforesaid, shall be the same as the fees for similar services, rendered in a suit at law, respecting the title of land, depending in any circuit court in the state.

Fees of the officers.

CHAPTER 40.

An act, concerning the attorney general and district attorneys.

Passed June 27, 1822.

Attorney general's oath.

(*See Chap. 55 sec. 3.)

To be of counsel for the state in all cases.

His duty in the circuit courts of the second judicial circuit.

Provision for his failure to attend those courts.

SEC. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi, in general assembly convened,* That there shall be an attorney-general for the state, who shall, before he enters on the duties of his office, take and subscribe the oath of office prescribed in the constitution;* which oath shall be administered by the governor of the state, or any judge of the supreme court, and certified on the back of his commission: and the attorney-general so appointed, shall be of counsel for the state in all cases whatsoever; and it shall be his duty to attend in person all the circuit courts, which may be held in the second judicial circuit, and to appear and prosecute for the state, in all criminal prosecutions, and in all civil cases, in which the state or any county within the state may be interested: *Provided, always,* That if the attorney-general fail to attend at any of the courts aforesaid, the court is hereby authorised to employ some attorney to act for the state, or county (as the case may be) in his place: and the attorney so employed, shall for his services be paid by the attorney-general, such sum as shall be allowed by the court before whom the services may be rendered.

His duty in the supreme court.

SEC. 2. It shall be the duty of the attorney-general to attend the supreme court, and appear for the state, in all cases wherein it may be interested, and in all cases in which any county in this state may have an interest, whether the case or cases originated in the supreme court, or be brought into the same by appeal, writ of error, or otherwise from any court in this state.

To give his opinion in writing in certain cases.

To institute and prosecute suits against persons indebted to the state, etc.

Proviso.

SEC. 3. All accounts of a public nature, before they are allowed by any of the courts aforesaid, shall be presented to the attorney-general, and his opinion thereon obtained in writing; and it shall also be his duty to give an opinion in all cases touching the public interest, when thereto required by the executive of the state: he shall also, at the request of the auditor of public accounts, state treasurer, or treasurer of any county in this state, give his opinion in writing upon all cases concerning the revenue or expenses of the state; and shall, when thereto required by the auditor of public accounts, state treasurer, or county treasurer, institute and prosecute to effect before the proper court, all persons indebted to the state, or to any county within the same: *Provided,* That when any such suit shall be instituted in any county, which it may be made the duty of the district attorney to attend, the duties herein required of the attorney-general, shall be performed by such district attorney.

His duty when he shall attend

SEC. 4. If the attorney-general shall attend any circuit court not within the second judicial circuit, it shall be his duty to counsel and advise, aid and assist, any district attorney, prosecuting in behalf of the state, in such courts, in all public prosecutions; and if the attorney-general or any district attorney, shall in any manner consult, counsel, advise or defend any person within this state, charged with any crime or misdemeanor, or breach of any penal statute, the attorney-general, or any district attorney so offending, shall, on conviction thereof, in any court of competent jurisdiction, be fined in a sum not exceeding five hundred dollars, and shall moreover be removed from office, and be rendered incapable thereafter of filling any office of profit or honor in this state.

a circuit court not within the second judicial circuit

Penalty for consulting, advising, or defending any person charged with an offence.

Sec. 5. The attorney-general shall keep his office at the city of Natchez, until otherwise provided for by law.

To keep his office at the city of Natchez.

Sec. 6. There shall be appointed a district attorney for the following counties, to wit: For Hinds, Warren, Claiborne and Jefferson, for the first district. There shall be appointed a district attorney for the following counties, to wit: For Wilkinson, Amite, Pike, Marion, and Hancock, for the third district; and there shall also be appointed a district attorney for the following counties, to wit: For Jackson, Green, Perry, Wayne and Monroe, for the fourth district, who shall, before they enter upon the duties of their office, severally take and subscribe the oath, prescribed in the constitution, to be administered, and certified as herein directed, in the case of the attorney-general, and shall reside within their respective districts; and it shall be the duty of the said district attorneys to appear and prosecute for the state, in their respective districts, in all criminal prosecutions, and in all civil cases in which the state, or any county within their districts respectively may be interested, and to perform such other duties within their respective districts, as are herein before required of the attorney-general; and if either of the said district attorneys shall fail to attend any circuit court in their respective districts, it shall be the duty of the court to appoint some attorney to prosecute, and act for the state or county (as the case may be) in his place; and the attorney so appointed, shall for his services, be paid by the district attorney failing to attend, such sum as shall be allowed by the court before whom the services may be rendered.

District attorneys.

Their oath.

To reside within their district.

Their duties.

Provision in case they fail to attend the circuit court.

Sec. 7. The attorney-general shall receive from the state a salary of one thousand dollars, to be paid quarter yearly out of the treasury of the state. The district attorney for the first district, shall receive a salary of six hundred dollars; the district attorney for the third district shall receive a salary of six hundred dollars; and the district attorney for the fourth district shall receive a salary of six hundred dollars, to be paid quarter yearly at the treasury of the state.

Salary of the attorney general and district attorneys.

Sec. 8. In all indictments for felonies, wherein a conviction shall be had, the fee of the attorney-general or district attorney

Fees of the attorney general and district attorneys.

shall be ten dollars: and in all inferior prosecutions in which judgment shall be given against the defendant, the sum of five dollars, to be collected as other fees, and paid by the officer receiving the same into the treasury of the state, for the use and benefit of the literary fund.

To be paid into the treasury of the state.

CHAPTER 41.

An act, concerning attorneys and counsellors at law.

Passed June 25, 1822

Qualifications necessaay for admission as attorney and counsellor at law.

Sec. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi in general assembly convened*, That no person shall hereafter be admitted an attorney or counsellor at law, in any court within this state, unless he be a citizen of the United States, and approved by such court for his good character and learning, and the name of every person admitted shall be put in a roll or book to be kept in each court for that purpose, and every person so admitted, shall, upon such admission in open court, take the following oath or affirmation, to wit: "I, ——, do solemnly swear (or affirm, as the case may be) that I will demean myself as an attorney and counsellor of this court, according to the best of my learning and ability, and with all good fidelity as well to the court as to the client; I will use no falsehood nor delay any person's cause for lucre, or malice, and that I will support the constitution of the state of Mississippi, so long as I continue a citizen thereof: So help me God."

Oath.

Mode of granting license.

Sec. 2. It shall be the duty of the supreme court, at the commencement of each term thereof, to appoint three distinguished attorneys and counsellors of that court, of whom the attorney general shall be one, who, or any two of whom, shall examine in open court every applicant for license to practise as attorney and counsellor at law, in the several courts of this state, and if after such examination, they shall be of opinion that the person applying is duly qualified, they shall give to him a certificate to be signed by them, or any two of them, expressive of such opinion, which certificate shall be filed by the clerk; and thereupon, if the judges of said court shall be satisfied that the applicant is of good character, a citizen of the United States, and above the age of twenty-one years, they shall give to him a license under their hands, and the seal of the court, to practise as attorney and counsellor at law, in any court of law or equity, of this state: *Provided*, That any judge of the supreme court, in the recess of the court shall have power and authority to grant a temporary license to any applicant possessing the qualifications herein before mentioned, to practise as an attorney and counsellor at law, in the several courts of law and equity of this state; which license shall expire at the end of the next succeeding term of the supreme court: *And provided also*, That nothing herein contained shall be construed to authorise the granting

Temporary license.

any special license, to any attorney or counsellor at law, residing without the limits of this state.

License to be produced and oath taken in each court.

Sec. 3. Every attorney and counsellor at law, before he shall be permitted to practise in any of the courts of this state, shall first produce his license in each court where he intends to practise, and in the presence of such court shall take the oath herein before prescribed.

Penalty for practising without license, etc.

Sec. 4. If any person shall presume to practise as attorney and counsellor at law, in any of the courts of this state, without a license first obtained as aforesaid, or without qualifying himself in such court, in the manner before directed, he shall for every such offence forfeit and pay the sum of two hundred dollars, for every cause he shall prosecute or defend, in any of the said courts; one moiety to the use of the informer, and the other moiety to the state, for the use and benefit of the literary fund; to be recovered by action of debt in any court of competent jurisdiction: *Provided*, That nothing herein contained, shall be so construed, as to prevent or deprive any citizen from the privilege of personally prosecuting or defending any suit, in which he may be a party.

Proviso.

Persons convicted of felony incapable of license; or it may be superseded.

Sec. 5. Every person who hath already been, or shall hereafter be, convicted of any felonious crime, shall be incapable of obtaining such license, or if licensed, the judges of any court, in which such person may practise, on proof thereof being made to them, may supersede his license.

Suspension for mal-practice, misdemeanor, etc.

Sec. 6. If any attorney, or counsellor at law, shall be found notoriously in default of record, or otherwise guilty of any deceit, mal-practise, or misdemeanor, he may be suspended or put out of the roll, at the discretion of the court; and if put out of the roll, shall never afterwards be received, to act as attorney or counsellor in any court of this state. And when any attorney shall die, or cease to act, or be put out of the roll of attorneys, the person for whom he was attorney shall be warned to appoint another attorney in his place: *Provided*, That if other counsel be employed in the cause, such warning shall not be deemed necessary.

Party to be warned to appoint another, when his attorney ceases to act.

Fine for misbehavior or contempt.

Sec. 7. Any court of law or equity in this state, shall have power to fine any attorney or counsellor at law, for misbehaviour, or contempt offered to such court, as in other cases of contempt, and may also cause any attorney or counsellor practising in said court, to find security for his good behaviour.

Liability for costs and damages when a suit is dismissed for non-attendance or neglect.

Sec. 8. If any suit shall be dismissed for the non-attendance or neglect of an attorney, or counsellor practising in any court of law or equity in this state, not having a just and reasonable excuse, it shall be at his cost. And he shall moreover be liable for all damages his client may sustain by such dismission, or any other neglect of his duty, to be recovered in any court of record having cognizance thereof.

Mode of proceeding against attorneys, etc. retaining client's money after demand.

Sec. 9. Every attorney, or counsellor, receiving money for his client, and refusing to pay the same, when demanded, shall be proceeded against in a summary way, on notice before the supreme court, or the circuit court of the county, where such attorney, or counsellor usually resides, in the same manner that sheriffs are liable to be proceeded against for money received on execution, and damages in lieu of interest, not exceeding thirty *per centum* per annum, from the time of receiving such money, until it shall be paid, may be awarded on the principal sum recovered.

Penalty for not entering appearance according to engagement endorsed on a writ.

Sec. 10. In all cases where the sheriff or other proper officer is authorised by law, to take the engagement of an attorney, endorsed upon the writ, that he, such attorney, will appear for the defendant or defendants, every attorney thus entering into such engagement, who shall fail to enter an appearance agreeably thereto, shall forfeit to the defendant or defendants, twenty five dollars, for which judgment shall be immediately entered, and execution may issue thereon.

Number allowed to argue on one side.

Sec. 11. No court of law or equity in this state, shall suffer more than two attorneys to argue on any one side, except in criminal cases, unless good cause be shewn for departing from this regulation.

Penalty for appearing under a power of attorney made before action brought, for confessing judgment, etc.

Sec. 12. If any attorney practising in any of the courts of this state, shall presume to appear, under any power of attorney made before action brought, for confessing, or suffering judgment to pass by default or otherwise, for any defendant, in any court of record within this state, he shall for every such offence, forfeit and pay two thousand dollars, to such defendant, for his or her own use, to be recovered with cost, by action of debt or information, in any court having jurisdiction thereof; and moreover, shall be liable to an action for damages at the suit of the party aggrieved.

Sec. 13. (*Repealed, January* 20, 1823. *See Chap.* 43, *sec.* 3.)

Certain officers prohibited from appearing as attorneys.

Sec. 14. No judge of the supreme court, chancellor of the state, sheriff, under-sheriff, or coroner, shall appear, or plead as attorney, for any person or persons whomsoever, in any court of law or equity, within this state, under the penalty of being fined by such court, in the sum of two hundred dollars for every such offence, to the use of the state, for the benefit of the literary fund. And no justice of the county court, or justice of the peace of any county in this state, shall appear or plead as attorney, for any person or persons whatsoever, in the county for which he shall have been appointed, and no clerk of any court of record within this state, shall appear or plead as attorney, for any person or persons whatsoever, in the court of which he is clerk, under the like penalty as is prescribed in the case of a judge of the supreme court, chancellor of the state, sheriff, under-sheriff, or coroner, to the use of, and for the benefit of the literary fund.

Counsel allowed no compensation as witness.

Sec. 15. No attorney or counsellor in any cause shall be allowed any compensation as witness, in any cause in which he shall be either attorney or counsel.

Attorneys and counsellors may inspect the papers, etc. relating to a suit.

Sec. 16. Every attorney and counsellor at law, practising in any court in this state, shall be allowed at all reasonable times to inspect the papers and records, relating to any suit in such court, in which he may be concerned as attorney or counsel, without being constrained to take copies thereof; but no attorney or counsellor, shall be permitted to take any papers or records out of the clerk's office, under any pretence whatever, but by special leave of the court.

CHAPTER 42.

An act, to authorise the judges of this state to appear as counsellors and attorneys in the courts of the United States in this state.

Passed June 22, 1822.*

(*Revived January 21, 1823, see Chap. 5 sec. 1.)

Judges may practice law in the courts of the U. States.

Sec. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi in general assembly convened*, That the judges of the supreme and superior courts of this state, shall be, and they are hereby authorised and permitted to appear as counsellors and attorneys at law, in the court or courts of the United States in this state.

CHAPTER 43.

An act, concerning the duties of clerks, and to repeal the 13th section of "an act concerning attorneys and counsellors at law."

Passed January 20, 1823.

Clerks to set the number of suits for trial on each day. (See Chap. 15, sec. 101.)

To issue subpœnas for witnesses to attend on the day for which the cause may be set.

Sec. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi, in general assembly convened*, That it shall be the duty of every clerk in making out his issue docket* for each term, to set as many suits for each day, beginning on the first, and proceeding as far in the term as the number of suits may make it necessary, as the court or judge may direct, or in his opinion may best suit the business of the court; and thereafter, on issuing subpœnas for witnesses in any cause, the subpœnas shall be so issued as to require the attendance of the witness or witnesses on the day for which the cause, in which the said witness or witnesses are so summoned, may be set.

Clerks allowed no fee for affixing seal.

Sec. 2. In all cases, where the clerk of any court within this state is by law required to affix the seal of office to any precept or instrument whatever, that the affixing the seal of office shall be considered as a part of his official signature, and the fee heretofore allowed by law for affixing the seal of office as aforesaid, shall not hereafter be allowed.

Repealing clause.

Sec. 3. That the 13th section of the act concerning attorneys and counsellors at law be and is hereby repealed.

CHAPTER 44.

An act, respecting the appointment and duties of sheriffs.

Passed June 15, 1822.

Election of sheriffs.

Tenure of their office.

Oath and bond.

(*See Chap. 55 sec. 3.)

Sec. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi in general assembly convened*, That there shall be chosen, at the time and in the manner prescribed in the constitution and laws of this state, one sheriff for each county within this state, who shall be commissioned by the governor, and shall continue in office for the term of two years, unless sooner removed; and before he enter on the duties of his office, he shall take the oath prescribed in the constituion,* before any justice of the county court, or justice of the peace of the county for which he is chosen, and enter into bond with two or more good and sufficient securities, to be approved by the presiding justice of the county court of such county, in the penalty hereinafter specified, payable to the governor of the state for the time being, and his successors in office; the condition of which bond shall be in the form, or to the effect following, to wit: "The condition of the above obligation is such, that whereas the above bound A. B. was duly elected by the qualified electors of the couuty of ———, sheriff of said county, at an election held therein on the ——— days of ———, for the term prescribed in the constitution; now therefore, if the said A. B. shall well and truly collect all fines, forfeitures and amercements accruing to, or becoming due to the state, or any county within the same, which may lawfully come into his hands for collection, against any person or persons residing or being found within the county of which he is sheriff, and shall punctually pay all such fines, forfeitures and amercements, so collected, to the person or persons entitled by law to receive the same; and shall also, well and truly execute, and due return make, of all process and precepts to him lawfully directed, and pay and satisfy all sums of money by him received by virtue of any such process or precepts, to the person or persons to whom the same are due, his, her or their lawful attorney, executors, administrators or assigns; and in all other things shall truly and faithfully execute and perform the said office of sheriff, during the term of his continuance therein, then the above obligation to be void, otherwise to be and remain in full force and virtue;" The presiding justice of the county court shall endorse on said bond, his approbation of the sureties therein named, and a certificate that he has administered to the sheriff the oath of office, and shall cause the bond, together with the endorsements thereon, to be recorded in the office of the clerk of the county court, and immediately thereafter deposite the same in the office of the secretary of state, there to be safely kept and preserved; and said bond shall not be void on the first recovery, but may be put in suit and prosecuted from time to time, at the costs and charges of any party injured, until the whole amount of the penalty thereof be recovered. An authenticated copy of any such bond shall be received in evidence in any court of law or equity in this state, in the same manner as the original would be, if it were present in court.

Authenticated copy of bond to [illegible] in [illegible]

Sec. 2. The sheriffs of the several counties in this state, shall respectively execute bond, with security as aforesaid, in the following penalties, to wit: The sheriff of the county of Adams in twenty-five thousand dollars; the sheriff of the county of Wilkinson, in twenty thousand dollars; the sheriff of the county of Claiborne, in fifteen thousand dollars; the sheriff of the county of Jefferson, in ten thousand dollars; the sheriff of the county of Franklin, in four thousand dollars; the sheriff of the county of Warren, in six thousand dollars; the sheriff of the county of Hinds, in four thousand dollars; the sheriff of the couuty of Amite, in ten thousand dollars; the sheriff of the county of Pike, in six thousand dollars; the sheriff of the county of Lawrence, in ten thousand dollars; the sheriff of the county of Marion, in six thousand dollars; the sheriff of the county of Covington, in four thousand dollars; the sheriff of the county of Greene, in four thousand dollars; the sheriff of the county of Perry, in five thousand dollars; the sheriff of the county of Jackson, in four thousand dollars; the sheriff of the county of Wayne, in five thousand dollars; the sheriff of the county of Hancock, in four thousand dollars; and the sheriff of the county of Monroe, in ten thousand dollars. And the sheriff of each and every new county, which shall hereafter be erected and organized, in four thousand dollars, until it shall be otherwise provided for by law.

[illegible] the [illegible] giv- [illegible] her- [illegible] sever- [illegible]

Sec. 3. If the candidate having the greatest number of votes as sheriff of any county in this state, shall fail or refuse to take the oath of office, and give bond, as by this act is directed, for the space of ten days after he shall have been duly elected, such election is hereby declared void; and it shall be the duty of the presiding justice of the county court, to certify the fact to the governor, who shall thereupon issue his writ of election, directed to the coroner, any justice of the county court, or justice of the peace of the county wherein such failure or refusal may happen, commanding him to hold an election according to law, on a day or days therein specified, to supply the vacancy occasioned thereby.

Persons duly elected failing to take oath and give bond for ten days, election void.

Sheriffs may be required to give new bond and security in certain cases.

SEC. 4. In case the securities or either of them, of any sheriff, shall remove his or their residence out of this state, permanently, or shall become insolvent, it shall be the duty of the presiding justice of the county court, on satisfactory proof of such removal or insolvency, to notify such sheriff to appear before him at a day and place therein named, within twenty days thereafter, to give a new bond with other good and sufficient security, in a penalty equal to that of the former bond, with the like condition; and if such sheriff shall refuse or neglect so to do, the said presiding justice shall certify the fact to the governor, who shall forthwith vacate the commission of the sheriff so refusing or neglecting, and issue his writ of election in manner aforesaid, to supply the vacancy. And if any sheriff shall be found by inquest according to law, an idiot, lunatic, or *non compos mentis*, during the period for which he is appointed, the governor shall issue his writ of election as in other cases, for the election of a new sheriff.

On refusal, commission to be vacated.

In case sheriff is found by inquest to be an idiot or lunatic, &c. a writ of election to issue.

Penalty for executing office without taking oath and giving bond. (See chap. 6. sec.10)

SEC. 5. If any sheriff elect shall presume to execute the office of sheriff, before he shall have given bond and taken the oath of office* agreeably to the directions of this act, all such his acts and proceedings, done under color of office, shall be absolutely void, and he shall, for such offence, be liable to be indicted for a misdemeanor, and on conviction thereof, before any court of competent jurisdiction, fined in any sum not exceeding two thousand dollars.

Sheriffs may appoint deputies

SEC. 6. The sheriffs of the several counties within this state, shall have power to appoint one or more deputies, who shall have full power and authority to do and perform all the several acts and duties enjoined upon their principals; and every such appointment shall be by writing, under the hand and seal of the sheriff. And every deputy sheriff before he enter on the duties of such office, shall take and subscribe, before a justice of the county court, or justice of the peace of the county, an oath or affirmation faithfully to execute the office of deputy sheriff, according to the best of his skill and judgment; which appointment, with the certificate of the oath or affirmation thereupon endorsed and attested by the said justice, shall be by such deputy sheriff carefully filed and securely kept in the office of the clerk of the county court, in and for the same county: *Provided*, That nothing in this section contained, shall be construed to prevent the sheriff from removing his deputy or deputies at pleasure. And if any person shall proceed to execute the office of deputy sheriff, before he shall have received an appointment as aforesaid, and taken the oath or affirmation of office, and filed the same appointment and certificate of such oath or affirmation in the clerk's office as aforesaid, then all such his acts and proceedings done under color of office, shall be absolutely void.

Appointment, how made.

May remove deputies at pleasure.

Sheriffs to execute and return all process directed to them.

SEC. 7. Every sheriff by himself or his deputy, shall, from time to time, execute all writs and other process, to him legally issued and directed, within his county, and shall make due return thereof to the proper court, on the day to which the same is returnable; and if any sheriff shall fail herein, or shall make a false return on any such writ or other process, issued and directed to him as aforesaid, such sheriff shall, for every such offence, be fined by the court into which such writ or other process is returnable, in any sum not exceeding one hundred dollars, on motion, reasonable notice being first given to the sheriff of such motion, one moiety thereof to the party grieved, and the other moiety to the state for the use and benefit of the literary fund; and such sheriff shall, moreover, be liable to the action of the party injured by such default, for all damages which he, she or they may have sustained thereby, and also to such other fines, penalties and forfeitures, as are provided by law against sheriffs, for failing to return writs or other process, directed to them, or for making a false return thereon.

Liability on failure.

Remedy of sheriffs against their deputies for retaining money, or suffering persons in custody to escape.

SEC. 8. The sheriff of any county shall have the same remedy and judgment against his deputy, failing to pay the money by him received, on any execution or other process, to the sheriff, or the party to whom the same is payable, his agent or attorney, or suffering any person in his custody to escape, as the creditor at whose suit such writ issued, may have against the sheriff or his deputy, or the securities of such sheriff or deputy.

Return of process served by a deputy.

SEC. 9. And to prevent disputes between sheriffs and their several deputies, which of them may have acted in serving executions or other process: *Be it further enacted*, That when any deputy sheriff hath served any writ, execution, attachment, or other process whatsoever, he shall endorse on such writ or other process, the day of the month and year, he or they shall have served the same, and subscribe his name, as well as that of his principal, to the return of such writ or other process; and every deputy sheriff failing herein, shall be liable to the same penalty as is by law inflicted on the sheriff for a false return, and to be recovered and appropriated in the same manner.

Remedy of sheriffs, when fines or judgments are assessed or rendered against them for the misconduct of deputies.

SEC. 10. Where any fine, penalty, or judgment, has been assessed or rendered, or which may be assessed or rendered, against any sheriff heretofore, or now in office, or who may hereafter come into office, his heirs, executors or administrators, for, or on account of any default, or misconduct of any deputy of such sheriff, it shall and may be lawful for the court in which such fine, penalty, or judgment, has been, or may be assessed or rendered, upon motion to them, made by such sheriff, his heirs, executors, or administrators, to give judgment against such deputies and his securities, their heirs, executors, or administrators, jointly and severally, for the full amount of all such fines, penalties or judgments, and to award execution for the same: *Provided*, such deputy and his securities, their heirs, executors or administrators, have ten days previous notice of such motion.

Sheriff to deliver goods in his hands at the end of his term to his successor

SEC. 11. Every sheriff, who shall have levied any writ of execution, or other process on goods and chattels, which shall remain in his hands and possession, unsold, at the expiration of his term of service, shall be, and he is hereby required to deliver over such goods and chattels so remaining unsold, to his successor in office, taking his receipt for the same; and it shall be the duty of the sheriff to whom such goods and chattels are delivered as aforesaid, to proceed to sell the same in like manner as the predecessor ought to have done, had he continued in office; and to account for and pay the proceeds of such sale, to the party or parties entitled thereto by law. And if any sheriff shall fail or refuse to deliver over to his successor in office, any goods and chattels so levied on, and remaining in his hands, as aforesaid, on demand thereof made, it shall be lawful for the plaintiff in such writ of execution, or other process, to move the court from which the writ or process issued, against the sheriff so failing or refusing, and his securities, their heirs, executors or administrators; upon which motion, judgment shall be entered up for the amount of the execution or other process, which came to the hands of such defaulting sheriff, with interest at the rate of fifteen per cent. per annum, from the return day of such execution, or other process, and the costs of such motion: *Provided*, That such sheriff shall have reasonable notice of such motion.

To deliver to his successor all writs unexecuted.

SEC. 12. Every sheriff shall, at the expiration of his office, deliver all writs in his possession, unexecuted, to his successor in office, who shall give a receipt for the same, and shall execute and return all such writs; and shall also, deliver to his successor a certified list of the names of all persons confined in the jail of his county, and the cause of their commitment; a copy of which list shall be filed in the office of the clerk of the county court, by the sheriff receiving the same.

Also a certified list of the names of persons in jail, and cause of their commitment.

Sheriff to keep the peace within his county.

SEC. 13. It shall be the duty of every sheriff, to keep the peace within his county, by causing all offenders against the law, in his view, to enter into recognizances, with sureties, for keeping the peace, and appearing at the next circuit court to be holden in the same county, and to commit in case of refusal; which recognizances shall, by the said sheriff, be returned and certified before the said court. It shall also be his duty to quell and suppress all affrays, riots, routs and unlawful assemblies, for which end he shall be, and is hereby empowered to call to his aid the power of the county. He shall pursue, apprehend, and commit to jail all persons charged with treason, felony or other crime; and he is hereby authorised to take recognizances, with good and sufficient security, of any person or persons whom he

May call the power of the county to his aid.

may arrest on the process of a circuit court of law, charged before such court with any crime or misdemeanor, not punishable with death, in a reasonable penalty, conditioned for the appearance of the offender or offenders, to the next term of said court; unless such process be made returnable forthwith during the term of the court at which the same is awarded. He shall duly attend upon all the courts of record, at their respective terms or sessions, in his county.

May take recognizances in certain cases of persons whom he may arrest on the process of a circuit court.

Sheriffs to attend courts of record.

Sec. 14. When the sheriff, or any of his deputies, find that resistance will be made against the execution of any process, the sheriff, laying aside all other business, and taking with him the power of the county, shall forthwith go in his proper person and execute the same; and if he find resistance, he shall certify to the court, the names of the persons making such resistance, their aiders, assistants, favourers and procurers, so that they may be proceeded against according to law.

Duty of sheriff when resistance is made to the execution of any process.

Sec. 15. It shall be the duty of every sheriff or jailor to keep, in the jail of his county, separate rooms for the sexes, and not permit any communication between them, except they are lawfully married; and it shall not be lawful for any sheriff or jailor to confine or keep debtors and criminals together, in the same room or chamber, but they shall be confined and kept separate and apart from each other, in distinct rooms; and the sheriff shall, at all times, be responsible, that his jailor provide good and wholesome food and drink for all persons committed to the jail of his county, for criminal offences, either before, or after conviction; but any such prisoner or prisoners may, if he, she, or they think fit, supply himself, herself, or themselves, with meat and drink, as aforesaid; and in either case, the same shall pass through the hands of the jailor to such prisoner or prisoners.

Sheriff or jailor to keep separate rooms in the jail for the sexes; also for debtors and criminals.

Sheriff responsible that his jailor provide wholesome food for criminals.

Sec. 16. Every person imprisoned for a criminal offence, who may be unable to support himself or herself in prison, shall be supplied by the sheriff or jailor, under his direction, daily, with sufficient wholesome food and drink, with fire when necessary and proper, and with cleanly and sufficient bed-covering; and in case of conviction, if the prisoner be unable to discharge the fees for his support as aforesaid, or in case of acquitttal, and the costs be not taxed on the prosecutor, the same shall be paid by the state, out of any money in the treasury not otherwise appropriated; and the auditor of public accounts is hereby authorised and required, on the certificate of the court having cognizance of the offence for which such prisoner was confined, specifying the sum due, and that he or she was unable to support himself or herself in prison; or, in case of acquital, that the costs were not taxed on the prosecutor, to issue his warrant on the treasurer of the state, in favor of such sheriff or jailor, for the sum expended by him, and certified as aforesaid; and no

Compensation for supplying criminals unable to support themselves.

How certified and paid.

greater amount shall be demanded or received by any sheriff or jailor, for the support of any prisoner, in manner aforesaid, than the sum allowed by law.

Prisoners in a civil or *qui tam* action, to furnise their own support.

SEC. 17. Every person committed to prison in a civil or *qui tam action*, whether upon original, mesne, or final process, shall furnish his or her own support and maintenance; and for that purpose, the sheriff or jailor shall admit any person who will administer to the wants of such prisoner, to furnish him or her with such support and maintenance; in such manner, however, as not to aid any escape, or endanger the security of the prison. But if any prisoner, committed as aforesaid, shall be unable to support and maintain himself or herself in prison, the sheriff, or jailor, under his direction, shall furnish such person, daily, with wholesome food and drink, with fire if necessary and proper, and with cleanly and sufficient bed-covering, for which such sheriff or jailor shall be entitled to demand and receive of the plaintiff or plaintiffs, his, her, or their agent or attorney, fifty cents per day, payable weekly; and in case of failure on the part, of the plaintiff or plaintiffs, his, her, or their agent or attorney, to pay the same, such sheriff or jailor shall be authorised to discharge such prisoner out of jail: *Provided*, The sheriff or jailor shall have given to such plaintiff or plaintiffs, his, her, or their agent or attorney, ten days previous notice thereof: *And provided also*, That such discharge shall not go to exonerate any defendant, so discharged out of custody, from the debt for which he had been in confinement, but the same shall be as if the defendant had never been committed to jail.

If unable to support themselves to be supported by sheriff or jailor.

Compensation therefor may be demanded of the plaintiff.

Prisoner may be discharged if plaintiff fail to make payment.

Jailor not to sell strong liquor to prisoners.

SEC. 18. No sheriff, jailor, or person having the care or keeping of any jail, shall sell, or dispose of, to any person or persons, under arrest or in prison, any wine, rum, brandy, whiskey, or other strong or intoxicating liquor, under the penalty of twenty dollars for each offence, to be recovered before any justice of the peace of the proper county, one half to the person suing for the same, and the other half to the use of the county.

Sheriff or jailor to file all process or copies therof by which a prisoner is committed or enlarged

SEC. 19. All warrants, mittimusses, writs, process, or precepts of any kind, or the attested copies thereof, by which any prisoner may be committed to, or enlarged from any jail in this state, shall be regularly filed in their order of time, and safely kept by the sheriff, or keeper of the jail, under his direction; and upon the death, removal, or resignation of any sheriff, all said warrants, mittimusses, writs, process and precepts, or copies thereof, filed and kept as aforesaid, shall be delivered over to his successor in office, on demand by him made, under the penalty of three hundred dollars; to be recovered of the sheriff so resigned or removed, or his executors or administrators, in case of his death, by action of debt, before any court of competent jurisdiction; one half to the use of the person suing for the same, and the other half to the use of the proper county.

Sec. 20. The sheriffs of the several counties in this state, shall keep their respective offices at the place designated by law for holding the courts of their respective counties.

Sheriff's office, where to be kept.

Sec. 21. It shall be the duty of sheriffs and jailors, to receive from constables and other officers, all persons who shall be apprehended by such constables or officers for offences against this state: and if any sheriff or jailor refuse to receive such offenders, he shall be adjudged to be guilty of a misdemeanor, and on conviction thereof before any court of competent jurisdiction, shall be fined at the discretion of the court.

Sheriffs and jailors to receive offenders apprehended by constables and other officers.

Sec. 22. It shall not be lawful for any jailor, or keeper of any jail, or any sheriff, deputy sheriff, or other person, to keep an inn, tavern, or shop, in any jail or building occupied as a jail of any county within this state; and every sheriff, deputy sheriff, jailor, or other person so offending, shall be deemed guilty of a misdemeanor, and punished by fine and imprisonment, at the discretion of the court before whom such conviction is had.

Tavern not to be kept in a jail.

Sec. 23. No person who may be deputed, by any sheriff to do a particular act only, shall be required to take the oath directed by this act to be taken by deputy sheriffs.

No oath to be taken by persons deputed to do a particular act.

CHAPTER 45.

An act, concerning coroners.

Passed June 13, 1822.

Sec. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi, in general assembly convened*, That there shall be chosen, at the time, and in the manner prescribed in the constitution, and laws of this state, one coroner, for each county within the same, who shall be commissioned by the governor, and shall continue in office for the term of two years, unless sooner removed; and before he enter on the duties of his office, he shall take the oath prescribed in the constitution,* before any justice of the county court or justice of the peace, of the county for which he is chosen, and enter into bond, with two or more good and sufficient securities, to be approved by the presiding justice of the county court of such county, in the penalty of one half the sum required by law of the sheriff of that county, for which such coroner is chosen, payable to the governor of the state for the time being, and his successors in office, with the like condition, *mutatis mutandis*, as is prescribed in the bond directed by law to be given by sheriffs.* The presiding justice of the county court shall endorse on said bond, his approbation of the sureties therein named, and a certificate that he has administered to the coroner the oath of office, and shall cause the bond, together with the endorsements thereon, to be recorded in the office of the clerk of the county court, and imme-

Election of coroners.

Tenure of their office.

Oath and bond. (See chap. 55, sec. 3.)

(*See chap. 44 sec. 1.)

diately thereafter deposite the same in the office of the secretary of state, there to be safely kept and preserved; and said bond shall not be void on the first recovery, but may be put in suit and prosecuted from time to time, at the cost and charges of any party injured, until the whole amount of the penalty thereof, be recovered; an authenticated copy of any such bond shall be received in evidence in any court of law or equity in this state, in the same manner as the original would be, if it were present in court.

Authenticated copy of bond to be received in evidence.

Reference to the act respecting sheriffs. (*See chap. 44.)

SEC. 2. The provisions of the third, fourth and fifth sections of the act, entitled "An act, respecting the appointment and duties of sheriffs,"* shall, in all respects, be applied to, and put in force against any coroner or coroners, who may be elected by the qualified electors of any county within this state according to the import, intent, and meaning thereof.

Coroner to take inquests of deaths in prisons, &c.

To issue precept to a constable, requiring him to summon jurors.

SEC. 3. Every coroner shall, upon view of the body, take inquests of deaths in prison, and of all violent, sudden, or casual deaths within his county, and the manner of such deaths; and as soon as he shall have notice, or be certified of any death as aforesaid, he shall make out a precept, directed to any constable of the county, where the dead body is found or lying, requiring him to summon twenty-four good and lawful men of the same county, to appear before him at the time and place in such precept mentioned; which precept shall be in the form, or to the effect following:

"—— COUNTY, ss.

The State of Mississippi, to any of the Constables of the said county:—

Form of precept.

You are required, immediately upon sight hereof, to summon twenty-four good and lawful men of the said county of ——, to be and appear before me, A. B. coroner of the county aforesaid, at ——, in the said county, on the ——, day of ——, at the hour of ——, in the —— noon of same day, then and there to inquire of, do, and execute, all such things, as on behalf of the state, shall be lawfully given them in charge, touching the death of C. D. (or a person unknown, as the case is) and be you then there to certify what you shall have done in the premises; and further to do and execute what, in behalf of the said state, shall be then there enjoined upon you.—Given under my hand and seal, at —— in the said county, the —— day of —— A. D. ——."

Constable to execute and return precept.

SEC. 4. The constable, to whom such precept shall be directed or delivered, shall forthwith execute the same, and shall repair to the place at the time mentioned therein, and make return of the precept, with his proceedings thereon, to the coroner who issued it.

Coroner to certify and return constable for neglect of duty,

SEC. 5. It shall be the duty of the coroner to certify and return every constable, who shall neglect or refuse to execute the services and duties, or any of them, by this act prescribed; and every person who shall be summoned as a juror, as aforesaid, or as a witness, according to the provisions of this act, and shall not appear, to the next circuit court, to be held in and for the county; which court, unless a reasonable excuse be offered, shall set such fine upon the constable, juror or witness, so offending, as they shall think fit and reasonable, not exceeding one hundred dollars.

and jurors or witnesses for nonappearance, to the next circuit court.

Oath of the jurors.

Sec. 6. The coroner shall swear or affirm twelve or more of the jurors, who shall appear, and shall administer to the foreman of the inquest, an oath or affirmation, upon view of the body, in form following:

"You, as foreman of this inquest, shall diligently inquire, and true presentment make, on behalf of the state of Mississippi, how, and in what manner, C. D. (or person unknown, as the case is) here lying dead, came to his death, and of such other matters relating to the same, as shall be lawfully required of you, according to evidence—So help you God." And then shall swear or affirm, by three at a time, in order, the rest of the jurors, in the form following:

"Such oath, or affirmation, (as the case may be,) as the foreman of this inquest hath taken on his part, you, and every of you, shall well and truly observe and keep on your part."

Coroner to give a charge to the jurors.

Sec. 7. When the jurors are sworn or affirmed as aforesaid, the coroner shall give them a charge, upon their oaths or affirmations, to declare of the death of the person, whether he or she died by murder, manslaughter, misadventure, misfortune, accident or otherwise, and when and where, and by what means, and in what manner, and if by murder, who were principals, and who were accessaries; and if by manslaughter, who were the perpetrators, and with what instrument the stroke or wound was in either case given, and so of all prevailing circumstances, which may come by presumption; and if by misadventure, misfortune, accident or otherwise, whether by the act of God or man, and whether by hurt, fall, stroke, drowning, or in any other way; to inquire what persons were present at the death, from whence the deceased came, and who he or she was, and his or her parents, relatives or neighbors; who were the finders of the body, whether killed in the same place where he or she was found; or if elsewhere, by whom, and how he or she was brought from thence, and of all circumstances relating to the said death; and if he or she died in prison, whether by hard usage there or not, and if so, how and by whom, and if he or she put an end to his or her own life, then to inquire of the manner, means, or instrument, and of all circumstances concerning it.

To issue process for witnesses.

Sec. 8. It shall be lawful for every coroner to issue process for witnesses, commanding them to come before him to be examined, and to declare their knowledge concerning the matter in question; and the said coroner shall administer to every witness an oath or affirmation in form following:

Oath of witnesses.

"You solemnly swear (or affirm) that the evidence which you shall give to this inquest on behalf of the state, touching the death of C. D. (or person unknown, as the case is) shall be the truth, the whole truth, and nothing but the truth."

Coroner to issue warrant to apprehend persons found guilty by inquisition.

SEC. 9. If any be found guilty by inquisition, taken in manner directed by this act, and be not in custody, the coroner shall forthwith issue his warrant to apprehend the person so found guilty, and the accessaries, if any; and the person accused, if apprehended, shall, forthwith be taken before some justice of the county court, or justice of the peace of the county where the offence was committed, to be dealt with according to law.

To commit to writing the marial evidence and bind witnesses by recognizance to appear at the next circuit court.

SEC. 10. Every coroner, upon any inquisition before him found, whereby any person or persons shall be charged or accused of murder or manslaughter, or as accessary or accessaries to the said crime of murder or manslaughter, either before or after the commission thereof, shall put in writing so much of the evidence given to the jury before him, as shall be material; and every such coroner is hereby authorised and required to bind all such, by recognizance, as do declare any thing material to prove the said murder or manslaughter, or to prove any person or persons to be accessary or accessaries, as aforesaid, to the said murder, to appear at the next circuit court to be holden within the county, where the trial thereof shall be, then and there to give evidence against such offender or offenders, at the time of his, her, or their trial, and shall certify, as well the same evidence, as such recognizance or recognizances in writing, as he shall take, together with the inquisition before him taken and found, to the said circuit court, at or before the time of the trial of the party so charged or accused.

To certify the evidence &c. to the court.

Penalty on coroner for neglect of duty.

SEC. 11. If any coroner be remiss, and do not take inquisition as aforesaid, or do not certify as is before directed, or shall offend in any thing contrary to the true intent and meaning of this act, he shall for every such offence, forfeit and pay the sum of three hundred dollars, to be recovered by action of debt, in any court of competent jurisdiction in this state; one half thereof to the use of the informer, the other half to the state, for the use and benefit of the literary fund.

In case of dangerous wound the person accused to be taken and kept.

SEC. 12. If any person be dangerously wounded, the party accused shall be taken immediately, and kept until it be known perfectly, whether he who is hurt shall recover or not; and if he die, the offender shall be kept; and if he recover of the wound, the offender shall enter into a recognizance to appear at the next circuit court of the county, to answer for the offence.

When slaves are found guilty by inquisition.

SEC. 13. If any slave or slaves shall be found guilty, by inquisition taken, as aforesaid, of murder or manslaugter, or as accessary thereto, either before or after the commission of the crime, such inquisition, and all matters relating thereto shall be returned by the coroner to the county court of the county, where the offence is charged to have been committed.

When justices of the peace may hold inquest of murder, &c.

Sec. 14. If upon a murder, or other untimely, or accidental death, there be no coroner within the county where such case shall happen, or if, from sicknsss or other cause, the coroner cannot be had, in due time, to hold an inquest upon the body of any person so coming to an untimely death, it shall be lawful for any justice of the peace in such county, to do and perform all the duties, appertaining to the office of coroner in such case, and shall be entitled to the same fees; and the inquest so taken and returned, shall be as effectual in law, as if taken and returned by the coroner.

In what cases the corner shall perform the duties of sheriff.

Sec. 15. If, hereafter, there shall from any cause whatever, be a vacancy in the office of sheriff in any county within this state, or the sheriff be a party, or interested in any suit, or for other just cause is rendered incapable to execute his office in any particular case, the coroner of such county shall, during such vacancy, or in the cases wherein such sheriff is disqualified to act, as aforesaid, execute, do and perform all the duties which appertain to the office of sheriff; and in every case, where, by such vacancy, or exception to the sheriff, any writ, of what nature soever the same may be, shall be delivered to the coroner of such county to execute, such coroner shall do and perform all things by virtue of such writ, which the sheriff himself might or ought to have done, had there been a sheriff duly qualified, or no just exception had existed against him, according to the nature of the case; and, in case of any neglect or breach of his duty, such coroner shall be subject to the same pains, penalties, fines, forfeitures, and damages, and to the same proceedings, judgment and execution, as sheriffs are subject to in like cases. And upon every execution issued against a coroner, upon any judgment obtained against him for breach or neglect of his duty, the clerk shall endorse, that "*no security is to be taken.*"

Execution against coroner for neglect of duty.

Remedy against coroner and securities.

Sec. 16. In all cases wherein a summary remedy is given against any coroner, the like remedy may be had against such coroner and his securities, jointly or severally, and against the executors and administrators of such coroner and his securities.

Coroners may appoint deputies.

Sec. 17. The coroners of the several counties within this state, shall have power to appoint one or more deputies, in like manner as sheriffs are by law authorised to appoint deputies, who shall have full power and authority to do and perform, all the several acts and duties enjoined upon their principals, except only the taking of an inquisition. And every coroner shall have the same remedy against his deputies, or either of them, for a breach or neglect of duty, whereby such a coroner may become liable to the party aggrieved, by the misconduct of such deputy, as is given by law, to sheriffs against their deputies in like cases.*

(*See chap. 44 sec. 8.)

In what cases process shall be directed to a justice of the peace.

SEC. 18. In every case, where there shall be a just cause of exception to the sheriff and coroner of any county, by reason of their being parties to, or interested in any suit, or there be no coroner qualified to act in any county, every writ or process, in such cases, of what nature soever the same may be, shall be directed to a justice of the peace of the county, where such exception or vacancy may happen, who shall be bound to execute the same, and to do and perform all things by virtue of any such writ or process, which the sheriff or coroner might or ought to have done, had there been no just cause of exception against him or them, or no such vacancy had occurred. And in case of any neglect or breach of his duty, such justice of the peace shall be subject to the same pains, penalties, fines, forfeitures and damages, and to the same proceedings, judgment and execution, as sheriffs and coroners are subject to in like cases; and every execution issued against such justice of the peace, upon any judgment obtained against him for breach or neglect of such duty, the clerk shall endorse that "*no security is to be taken.*"

Coroner to be keeper of the jail when the sheriff is committed.

SEC. 19. In case the sheriff for any cause shall be committed to jail, the coroner shall by himself, or such person as he shall appoint, be keeper of the jail during the time the sheriff shall remain a prisoner.

CHAPTER 46.

An act, concerning the appointment and duties of constables.

Passed June 13, 1822.

Appointment of constables.

Term of service

Oath and bond (*See chap 55, sec. 3.)

SEC. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi in general assembly convened,* That the county court in the several counties within this state, shall, from time to time, appoint so many fit and proper persons as they may think necessary, not less than one nor more than two in each captain's district, to serve as constables within the county for the term of two years; and every person so appointed, shall in open court, or before the presiding justice thereof, in vacation take the oath prescribed in the constitution,* (which oath in either case, shall be entered of record in said court,) and enter into bond with good and sufficient security, to be approved by the court, or the presiding justice thereof in vacation, in such penalty, not being less than five hundred dollars, nor more than fifteen hundred dollars, as such court or presiding justice in vacation, shall direct, payable to the governor for the time being, and his successors in office, with condition that he will well and truly discharge the duties of the office of constable in the county for which he has been appointed; that, at the end of every two years, the county court in each county, as aforesaid, shall make like appointments; and each person so appointed a constable, whether he has before served or not, shall in like manner take the oath prescribed in the constitution, and enter into bond with security as aforesaid; that, in case of the death, resignation or removal of any constable, the said court shall in like manner make a new appointment for the purpose of supplying the vacancy; and the person so appointed a constable shall take the oath prescribed in the constitution, and enter into bond with security, as aforesaid; that every such bond shall be recorded in the county court of the proper county, and may be sued in the same manner as sheriffs' bonds.* And if any person so appointed, shall perform any of the duties of his office, before he take the oath, and enter into bond as aforesaid, he shall forfeit fifty dollars for the use of the county in which he resides, to be recovered by action of debt in the name of the governor for the time being, with costs: *Provided*, That nothing herein contained, shall be construed to prevent any justice of the peace from appointing and deputing any person to act as constable, in cases provided for by law.*

(*See chap. 44, sec. 1.)

Penalty for executing office without taking oath and entering into bond.

(*See chap. 8, sec. 21.)

Sec. 2. The name of each person appointed a constable shall be entered on the minutes of the court, at the time of his appointment; and the clerk of every county court respectively, after the appointment of every constable in such county, shall certify such appointment under his hand, and deliver the same to the sheriff of said county within five days after every such appointment, under the penalty of ten dollars, to be recovered before any justice of the peace, and paid into the county treasury, for county purposes; and the sheriff shall, within ten days after such delivery as aforesaid, deliver the same to each respective person appointed as aforesaid, or leave the same at his usual place of abode, under the like penalty, to be recovered in manner aforesaid, to the use aforesaid; and every person so appointed as aforesaid, who shall not within ten days after such notice, take the oath of office, and enter into bond as by this act is directed, shall incur the penalty of fifty dollars, to be recovered in the county court of the county, where such appointment was made.

Names of persons appointed to be entered on the minutes of the court.

Clerk to certify and deliver the appointment to the sheriff.

Sheriff to deliver it to the person appointed.

Penalty for not taking oath and entering into bond.

Sec. 3. It shall be the duty of every constable, who now is, or hereafter may be appointed, to keep and preserve the peace within his county, and faithfully to aid and assist in executing the criminal laws of this state, to give information without delay, to some justice of the peace or other proper officer, of all riots, routs, and unlawful assemblies, and of every violation of the penal laws, which may come to his knowledge in any manner whatsoever; and also to execute and return all warrants and other process, civil and criminal, lawfully directed to him, according to the commands thereof; and pay over all moneys when collected by him, to the justice of the peace, or to the person lawfully authorised to receive the same; and for want of goods and chattels on which to levy an execution, the constable shall take the defendant's body by virtue thereof, and convey him to the common jail of the county; and the sheriff or keeper thereof, is hereby authorised and required to retain the defend-

Constable to preserve the peace.

To execute process directed to him.

ant so taken in execution, and him or her safely keep, till the debt and costs be satisfied, or such person be otherwise lawfully discharged.

To take care of live stock taken by him in execution.

Sec. 4. Where any property shall be taken by a constable by virtue of an execution, and such property shall consist of live stock, the constable shall take care of the same, for which an allowance shall be made him, by the justice of the peace, to whom such execution is returned, out of the proceeds of the sale of such property; and it shall be the duty of every constable levying an execution, to advertise the property taken by him, at some public place or places in the neighborhood, at least ten days previously to the sale thereof; and there shall not be more than fifteen days between such levy and the sale of the property so levied on.

To advertise property taken in execution.

Penalty on failure to return execution.

Sec. 5. If any constable or other officer shall fail to make return of any execution directed to him, by any justice of the peace, according to law, on or before the return day thereof, it shall be lawful for such justice of the peace, ten days notice being given, upon the motion of the party injured, to fine such constable or other officer, for the use of such party, in any sum not exceeding five *per centum* per month, upon the amount of such execution, counting from the return day thereof.

Proceedings against constable for retaining money collected on execution.

Sec. 6. If any constable or other officer, shall receive any money upon any execution directed to him by any justice of the peace, and shall not pay the same to such justice or other person lawfully authorised to receive the same, upon the return of such execution, the party or parties, his, her, or their executors or administrators, injured thereby, shall be entitled to the same remedy, by motion, for the sum so received with interest and costs, against such constable, or other officer, and his security or securities, his, her, or their executors and administrators, to which he would have been entitled against a sheriff,* for money received on an execution issued upon the judgment of a court of record. And the justice of the peace issuing such execution, or any other justice of the peace of the county, shall have power to hear such motion, and to render judgment thereon.

(*See chap. 27, sec. 49.)

Penalty for demanding and receiving fees not allowed by law.

Sec. 7. Every constable who shall demand and receive any fee or compensation, when by law he is not entitled to any, or shall demand and receive more than is allowed by law, shall forfeit and pay to the party injured, ten dollars for every offence; and shall moreover, be liable to double the sum so improperly received; to be recovered on motion in the court of the county, where such constable has been appointed, against him and his security or securities, his, her, or their executors or administrators, by motion, on ten days previous notice.

Fine on failure to discharge the duties required by this act.

SEC. 8. Any constable who shall fail to discharge the duties required of him by this act, where no particular penalty is provided for such failure, shall forfeit and pay a fine, not exceeding ten dollars, and judgment shall be entered against him for the same, whenever it appears to the satisfaction of any justice of the peace of the county, that such constable has been guilty of default or improper conduct: which fine when collected, shall be paid by such justice into the county treasury, for county purposes; and, moreover, shall be liable to an action for damages, at the suit of any party injured.

CHAPTER 47.

An act, concerning notaries public.

Passed, June 10, 1822.

Appointment of notaries public.

Oath. (*See chap. 55, sec. 3.

Bond.

SEC. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi, in general assembly convend,* That there shall be commissioned by the governor, on the recommendation of the county court of the several counties within this state, a competent number of notaries public, not exceeding three in each county, who shall reside in the county, and at the place for which they are appointed; and every notary, so appointed and commissioned, before he enters upon the duties of his office, shall take and subscribe the oath prescribed in the constitution,* before any justice of the county court, or justice of the peace of the county for which he is appointed, which shall be certified by the justice administering the same, on the back of his commission; and shall also give bond, with two good and sufficient securities, to be approved by the county court, or any justice thereof in vacation, in the penalty of two thousand dollars, conditioned for the faithful performance of the duties of his office; which bond shall be recorded in the office of the clerk of the county court of the county in which the said notary shall reside, and may be sued by any party or parties injured, in like manner, and with like effect, as bonds given by sheriffs and coroners, for the faithful execution of their respective offices.

Notaries public may administer oaths in certain cases.

SEC. 2. Every notary public shall have the power of administering oaths and affirmations, according to law, in all matters belonging or incident to their notarial office; and any person who shall be legally convicted of having knowingly and wilfully made or taken a false oath or affirmation, before any notary public, in any matter within his official duty, shall suffer the pains and penalties of wilful and corrupt perjury.

Their powers.

SEC. 3. Every notary public shall have power to receive the proof or acknowledgment of all instruments of writing, relating to commerce or navigation, such as bills of sale, bottomries, mortgages and hypothecations of ships, vessels or boats, charter parties of affreightment, letters of attorney, and such other writings as are commonly proved or acknowledged before notaries within the United States; and also, to make declarations, and testify the truth thereof under his seal of office, concerning all matters by him done in virtue of his office.

To keep registers of their official acts.

SEC. 4. Every notary public shall keep fair registers of all official acts by him done, in virtue of his office, and shall when thereunto required, give a certified copy of any record in his office, unto any person or persons applying for the same, such person or persons paying the legal fees therefor.

In case of their death, &c. registers to be lodged in the office of the clerk of the county court.

SEC. 5. In case of the death, resignation, disqualification or removal of any of the said notaries, his registers and other public papers shall be lodged within thirty days, next after such death, resignation, disqualilfication or removal in the office of the clerk of the county court, of the particular county where he resided; and the said clerk may bring and maintain an action of detinue for the same, and moreover, any person or persons detaining the same contrary to the directions of this act, shall be liable to a fine not exceeding one thousand dollars, to be recovered by information, in any court of competent jurisdiction, and paid into the county treasury, for county purposes; and such registers of public papers, shall not in any case be liable to be seized, attached, or taken in execution for debt, or for any demand whatsoever.

Notarial seal.

SEC. 6. Every notary public shall provide a notarial seal, with which he shall authenticate all his acts, instruments and attestations; on which seal shall be engraved an eagle, and the name, surname, and office of the notary, and his place of residence.

CHAPTER 48.

An act, establishing the fees of certain officers therein named.

Passed June 29, 1822.

Fees allowed.

SEC. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi in general assembly convened,* That it shall and may be lawful for the clerks of the supreme court, clerks of the superior court of chancery, commissioners in chancery, clerks of the circuit courts of law, clerks of the county courts, registers of the orphans' courts, sheriffs, coroners, constables, judges of probate, attorneys and counsellors at law, justices of the peace, attorney general, and notaries public, respectively, to demand, receive, and take the several fees hereinafter mentioned, and allowed, for any business by them respectively done, by virtue of their several offices, and no more; that is to say;

TO THE CLERKS OF THE SUPREME COURT.

Clerks of the supreme court.

	Dolls.	cts.
For entering the appearance of either party, in person, or by attorney,		50
Every rule entered on rule docket,		50
Copy of every rule,		50
Entering every continuance,		75
Administering an oath or affirmation,		50
Docketing every cause to be charged but once,		50
Entering every judgment,	1	00
Copy thereof, per hundred words,		25
Entering every decree,	2	00
Copy of the same, for every hundred words,		25
Filing the record upon a *writ of error*, *certiorari*, or *supersedeas*,		50
Copy of such record, for every hundred words,		20
Taxing costs in any suit or action, and copy thereof,		75
Every order in court,		50
A search for any thing above a year standing, and reading the same or any part thereof, if required		50

Allowance for office rent.

And there shall be allowed by the supreme court, to their clerk, reasonable office rent, to be paid on the order of court, annually, out of the treasury of the state, on the auditor's warrant; for every other service double the fees allowed the clerks of the circuit courts, for similar services.

TO THE CLERKS OF THE SUPERIOR COURT OF CHANCERY.

Clerks of the superior court of chancery.

	Dolls.	cts.
For entering each suit,		25
For filing each bill, answer, replication or other paper,		12½
Copies per hundred words,		15
Entering appearances,		25
Entering each rule,		25
Entering each continuance,		25
Entering each dismission, discontinuance, or *nol pros*,		50
Setting down cause for hearing,		25
For each writ,	1	25
Enrolling or recording each decree, every 100 words,		20
Each injunction or other bond,		75
Entering each motion,		25
Administering each oath, and certifying the same,		50
Entering the sheriff's return,		25
Entering each order,		25
Taxing costs,		50
For every *dedimus potestatem*,	1	00

For all other services the same fees as are allowed for similar services, to the clerks of the circuit courts of law.

TO COMMISSIONERS IN CHANCERY.

Commissioners in chancery

For copies of reports, or such other papers, as the parties in the suit referred to them may require, the same fees as the clerks of the superior court of chancery from which they receive their appointment are authorised by law to charge for similar services, and no more; to be in like manner collected and accounted for: *Provided*, That such charges shall be confined to the services for which no allowance is or shall be made by the rules of such court; and such fees being certified to the respective clerks, shall be taxed in the bill of costs, if the same would have been so chargeable, in case the same services had been performed by such clerks.

TO CLERKS OF THE CIRCUIT COURTS OF LAW IN CIVIL CASES.

Clerks of the circuit court, in civil cases.

	Dolls.	*cts.*
For each writ, other than those hereinafter named,	1	25
Docketing each cause, to be charged but once,		12 1-2
Filing each bond, declaration, plea, replication, or other pleading or paper,		12 1-2
Entering each appearance,		12 1-2
Entering each motion, rule, or order,		25
Declaration in ejectment,	2	00
Entering non suit, discontinuance or *nolle prosequi*,		50
Order, and copy of rule of reference,		75
Swearing each witness,		6 1-4
Entering each continuance,		25
Venirie facias, in every cause tried by jury,		25
Scirie facias, (except against jurors when excused,)	2	00
Swearing and empanneling every jury,		25
Receiving and entering verdict,		25
Entering each judgment in court,		25
Each subpœna for one witness,		50
And for every other name inserted,		12 1-2
Entering surrender of principal, by his bail,		25
Commission to take depositions,	1	00
Copies thereof, for every hundred words		15
Taking a recognizance,		50
Each execution,	1	00
Taxing costs in each cause,		50
Recording final judgment, each hundred words,		20
Each bail piece,		50
Certificate to witness, each,		25
For affixing seal of office,		25
Each separate certificate, (except to jurors,)		25

IN CRIMINAL CASES.

In criminal cases.

	Dolls.	*cts.*
For entering finding of indictment, or filing information,		25
Each writ other than herein named,	1	00
Arraigning prisoner, and entering plea,	1	50
Taking recognizance,		75
Swearing and empanneling each jury,		50
Entering verdict or judgment, each,		50
Swearing each witness,		12 1-2
Each subpœna, with one name,		50

And every other name inserted,	6 1-4
Each motion or order,	25
Venirie facias, in each case tried,	25
All copies, each one hundred words,	15
Recording final judgment, each one hundred words,	25
Taxing costs,	75
Each certificate,	25

Allowance for public services. For all public services not herein particularly provided for, the clerk shall at each term, exhibit a detailed fee bill, to be examined by the attorney general or district attorney, as the case may be, previous to allowance by the court, and the court is hereby authorised to allow the same, not exceeding fifty dollars, to be paid out of the county treasury.

TO THE CLERKS OF THE COUNTY COURTS.

Clerks of the county court. For the like services by them performed, the same fees as are by law allowed to the clerks of the circuit courts.

TO REGISTERS OE THE ORPHANS' COURTS.

Registers of the orphans courts.

	Dolls.	*cts.*
For recording the probate of any will or testament, and for letters testamentary thereon,	1	50
For recording a will, testament or codicil, for every hundred words,		20
For administering oath to executors, administrators, collectors or guardians, and recording the same,	2	00
For letters of administration, collection, or guardianship, and order granting the same,	1	25
For order appointing appraisers of an estate, and for copy,		50
For recording an inventory, appraisement, for executors, administrators, collectors, or guardians' accounts, for every hundred words,		20

TO THE SHERIFFS.

Sheriffs. For executing the process, judgments and decrees of a circuit court of law, and for similar services in other courts.

	Dolls.	*cts.*
For levying an attachment on the estate of an absent or absconding debtor,	3	00
Summoning each garnishee,		50
Serving *capias ad respondendum*, or other mesne process for ——— for each defendant,	1	50
Levying execution,	1	50
Entering each writ in his office,		25
Returning execution,		50
Serving defendant with copy of writ,		50
Each bail bond or recognizance, and assignment thereof,		75
Summoning each witness,		50
Executing a writ of possession and return,	3	00
For making deed to purchasers of real estate,	3	00
Attending prisoner on *habeas corpus*, each day,	3	00

For each commitment, or release,	1 00
Victualing a prisoner, each day,	40
Serving a declaration in ejectment, and copy thereof,	3 00
Serving a *ca. sa.* on each defendant, and commitment,	1 50
Advertising a runaway slave besides printer's charge,	1 00
Taking bonds of every kind, each,	75
Executing death warrant,	12 00
For removing a prisoner, for every mile going and returning,	12 1-2
For every day's attendance with such prisoner, on the judge, in vacation,	3 00
For empanneling a jury in each cause, where a jury is sworn,	50
For levying *fieri facias* and making money thereon, for the first one hundred dollars, five *per cent.*; for all sums above one hundred dollars, and not exceeding two hundred dollars, three *per cent.*; and for every one hundred dollars over in said execution, two *per cent.*	
For levying *fieri facias*, where sale is stayed by injunction or supersedeas, or not sold for want of bidders, or other cause, one half of the above commissions.	
For making money on *ca. sa.* same commissions as allowed on *fieri facias.*	
For putting a person in the pillory or stocks, by order of court,	3 00
For whipping a free person by order of court,	3 00
For whipping a slave by order of court, to be paid by owner	1 00
For burning in the hand or face,	3 00
For serving *scire facias*, on each defendant,	50
For summoning a jury upon any inquisition in the county, and attending on said jury and taking inquest, per day,	3 00
For serving every person with a summons, not herein provided for,	50
For serving an attachment, for contempt, and returning same,	1 00
For victualing a runaway slave, in jail, per day,	40
Executing *venirie facias*, to be taxed in each cause tried,	50
Summoning a special jury,	3 00

Where property attached is sold, the same commissions as for selling under execution.

For executing all process, orders and decrees of a court of chancery, the same fees as are allowed for executing the like process of a circuit court of law.

Allowance for public services not otherwise particularly provided for.

For empannelling grand juries, advertising and attending elections, serving all public orders of all courts in his county, and for all other public services not otherwise particularly provided for, a sum not exceeding fifty dollars, to be allowed by the circuit court, and paid out of the county treasury: *Provided*, That no fee shall be allowed for service of *scire facias*, against a defaulting juror, if not fined by the court.

For executing all process, orders and citations of an orphans' court, the same fees as are allowed for similar services in a circuit court of law.

IN THE SUPREME COURT.

In the supreme court.

	Dolls.	cts.
For an arrest,	1	00
Docketing process, and return thereof,		25
Serving *scire facias* or summons,		50
Serving any person with an order of court, and making return thereof,		25
For every cause docketed in the supreme court,		25

For all other services required by the sheriff, in the supreme court, the fees shall be the same as are allowed for similar services in the circuit courts.

For executing all process, orders and judgments of a county court, the same fees as for similar services are allowed for executing process in the circuit courts.

TO CORONERS.

Coroners.

	Dolls.	cts.
For taking an inquisition on a dead body,	10	00

For all services done by them, the same fees as are allowed to sheriffs, for similar services.

TO CONSTABLES.

Constables.

	Dolls.	cts.
For serving each warrant, or summons,		75
Summoning each witness,		37 1-2
Executing a *mittimus*, in criminal cases,		75
Whipping a slave by justices' order, to be paid by the owner,	1	00
Serving each warrant in criminal cases,	1	50
Serving an attachment,	1	25
Taking bonds when necessary, each,		75
Levying execution, and making the money thereon,	1	50
Summoning coroner's inquest, to be paid by the county,	3	00
For conveying a criminal to jail, per mile,		12 1-2
For conveying a debtor to jail, per mile,		12 1-2
Each day's attendance on supreme or circuit courts, by order of the courts, to be paid out of the state treasury: *Provided*, only one constable shall attend the supreme courts,	2	00

TO JUDGES OF PROBATE.

Judges of probate.

	Dolls.	cts.
For examining, stating, and reporting each account of executors, administrators, collectors or guardians; for the first sheet,	2	00
For every sheet more than one, contained in each ac-		

count,		50
For each order for advertising, issuing citations, and other notice or process,		50
For appointing an administrator, collector or guardian,	2	00
Each order for the partition of real estate, among heirs or devisees,	1	00
Each order for the appointment of commissioners on the representation of an estate being insolvent,	1	00
For apportionment of an insolvent's estate among creditors,	1	50

TO ATTORNEYS AND COUNSELLORS AT LAW.

Attorneys.

	Dolls.	*cts.*
For prosecuting or defending a suit in supreme court,	16	00
For like services in a circuit court,	10	00
For prosecuting or defending a suit in chancery.	16	00
For like services in a county court,	5	00
For prosecuting or defending a real or mixed action, in supreme or circuit courts,	20	00
On each appeal from the decision of a justice of the peace, to the county court,	5	00

TO THE ATTORNEY GENERAL OR DISTRICT ATTORNEYS,

Attorney general and district attorneys.

(For the use of the state, as a part of the revenue thereof.)

	Dolls.	*cts.*
For every criminal prosecution by indictment, in cases of felony, where the offender is convicted,	10	00
For every prosecution for misdemeanors, where the offender is convicted,	5	00
For every action by original writ, in behalf of the state, for the recovery of a pecuniary penalty, where the defendant is convicted,	10	00

TO JUSTICES OF THE PEACE.

Justices of the peace.

	Dolls.	*cts.*
For celebrating the rites of matrimony, and certificate thereof,	2	00
Each judgment in *qui tam* prosecutions,		50
Each mittimus or recognizance,		50
Each warrant in criminals cases,		50
Each subpœna,		25
Warrant or summons, in each civil case,		50
Proceedings thereon to judgment,		50
Each execution,		50
Each attachment, including bond and affidavit,	2	00
Each appeal, with the proceedings, bond and certificate,	1	25
Each certificate not otherwise provided for,		25
For taking depositions, each hundred words,		12 1-2
Each affidavit not otherwise provided for,		12 1-2
Each summons for garnishee,		25
Examining garnishee, each hundred words,		12 1-2
Transcript of his record, when required,		25

Issuing commission to take depositions,	50
Taxing costs on any execution,	25
For taking the probate of any deed, mortgage or other instrument of writing, concerning real or personal estate,	50
For taking the relinquishment of dower	50

TO A NOTARY PUBLIC.

Notaries public.

	Dolls.	*cts.*
For protesting any bill, registering and seal,	1	50
Attesting letters of attorney, and seal,		50
Notarial affidavit to an account or other writing, and seal,		50
Registering a foreign bill, protested with certificates,	1	00
Registering a protest of a bill of exchange, or note for non-payment, or non-acceptance,		50
Each oath or affirmation, and seal,		50
Notarial procuration, and seal,	1	00
Certifying sales at auction, and seal,	1	00
Taking proof of debts, to be sent abroad,	1	00
Protest in insurance cases, and seal,	1	00

Fees to be taxed in the bill of costs in suits where the service is rendered.

Sec. 2. The fees herein before mentioned, shall be taxed and allowed in the bill of costs, in all suits or actions, where the services respectively shall have been rendered; but not more than one copy of any matter shall be allowed in the bill of costs; neither shall the clerk tax more than one attorney's fee in the bill of costs, although more attorneys may have been employed on the same side in the cause; and if any plaintiff or defendant, his or her attorney, shall take out copies of his or her own declaration or pleadings, or of his or her own papers in any cause, or of any common order made in such cause, the charge of such copies shall not be allowed in the bill of costs, although such party recover.

Clerk and sheriff to keep fee book.

Sec. 3. Every clerk and sheriff shall keep a fee book, which shall be considered, and is hereby declared to be one of the books belonging to his office, and shall enter therein, in a regular account, to be opened for that purpose, every fee for each and every distinct service, by him rendered, charging for every particular article, in intelligible words and figures; and the said fee book shall be free for the inspection of any person wishing to see the account of fees charged against him therein, and there shall be a regular index made to such book, noting the folio or page in which the respective accounts are contained; and no clerk or sheriff shall be allowed to take or demand any fee for any service by him performed, which shall not be justified by the charge made, and entered in his fee book as aforesaid.

Fees not payable until the bill is produced.

Sec. 4. None of the fees herein before mentioned, shall be payable by any person whomsoever, until there be produced, or ready to be produced to the person owing, or chargeable with the same, a bill, or account in writing, containing the particulars of such fees, signed by the clerk, or officer, to whom such fees shall be due, or by whom the same are chargeable; in which said bill or account shall be intelligibly expressed, every fee for which money shall be demanded; and in all cases where any person, who shall be presented or indicted by the grand jury, shall be discharged from such presentment or indictment, neither the clerks or sheriffs shall charge fees for the same, but it shall be deemed to be included in the public services; but if the party or parties, so presented or indicted, shall be convicted, then the clerk and sheriff shall charge him, her or them, with all fees accruing thereon.

When persons are discharged from indictment or presentment, clerk and sheriff to charge no fees

Execution may issue for fees.

SEC. 5. It shall be lawful for the clerks of the several courts within this state, respectively, when suits or causes are determined, and the fees not paid by the party from whom they are due, to make out executions directed to the sheriff, or other proper officer of the county where the party resides, and it shall likewise be lawful for the register of the several orphans' courts to make out executions, in like manner, for the fees that may become due the officers of said courts, by virtue of this act, directed as aforesaid; and the sheriff or other proper officer, shall execute and return such executions as in other cases, and to every execution shall be annexed a copy of the bill of costs, specifying the particular items thereof, in intelligible words and figures; and all executions whatsoever, issuing without the copy of the bill of costs as aforesaid, shall be deemed illegal, and no sheriff or other officer shall serve or execute the same.

Copy of bill of costs to be annexed to every execution.

Tax demandable by the clerks of the circuit or county courts before issuing original process.

SEC. 6. The clerks of each and every circuit court of law within this state, shall, before issuing any original process to bring any defendant or defendants to answer to any suit or action, demand and receive of the plaintiff in such suit or action, a tax of two dollars on all such process; and the clerks of the several county courts shall respectively, in like manner, demand and receive one dollar, on all such process issuing out of said county courts; and the clerks of the several courts aforesaid, shall account for and pay the amount of money, which they shall respectively receive for the tax, on process by them issued as aforesaid, to the treasurer of the county wherein such suits or actions shall have been commenced, at the time and in the manner provided for in the "Act concerning the appointment and duties of county treasurers;" and if the clerk of any of the courts aforesaid, shall fail or neglect to demand and receive, at the time of issuing any process as aforesaid, the tax herein imposed, such clerk shall be deemed and held responsible for said tax, in the like manner as if he had actually received the same. And in every case wherein the plaintiff shall recover, the said tax shall be included in the bill of costs: *Provided*, That this act shall not be construed to extend to paupers, who may sue in any of the said courts.

Clerk to pay the tax to the county treasurer.

CHAPTER 49.

An act, prescribing the duties of the secretary of state.

Passed June 18, 1822.

Sec. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi, in general assembly convened,* That it shall be the duty of the secretary of state to keep his office at the place designated by law for the sitting of the general assembly, and carefully to preserve the books, records, papers and furniture, belonging to the same.

At what place the secretary of state shall keep his office.

Sec. 2. It shall be the duty of the secretary of state to take charge of, and safely keep in his office, the journals, papers and documents, relating to the proceedings of both houses of the general assembly, during the recess thereof, and the secretary of the senate and clerk of the house of representatives shall deliver the same to him, immediately after the adjournment of each general assembly, and he shall also take charge of the books, maps, and other property belonging to the state, and remaining at the seat of government, for the use of the general assembly.

To keep in his office the journals and papers relating to the proceedings of the general assembly.

To take charge of the maps, books, &c.

Sec. 3. The secretary of state shall cause to be made out and delivered to the public printer, an attested copy of the acts and resolutions passed at each session of the general assembly, immediately after the same shall be deposited in his office, and he shall carefully compare the printed copies thereof with the original rolls; and the person employed to copy the said acts and resolutions shall be allowed at the rate of twelve and one half cents per hundred words, to be paid on the certificate of the secretary of state to the auditor of public accounts, who shall issue his warrant on the state treasurer for the amount thereof.

Attested copy of the acts to be delivered to the public printer.

Compensation of the person employed to copy the acts.

Sec. 4. There shall be employed by the secretary of state, a suitable person or persons to distribute the laws and journals of the general assembly of each session, immediately after the same shall have been printed and deposited in his office, who shall receive such compensation as may be allowed, annually, by the general assembly. And the person or persons so employed shall, before he commence the said distribution enter into bond, with good and sufficient security, to be approved by the secretary of state, payable to the governor of the state for the time being, and his successors in office, in the penalty of eight hundred dollars, conditioned for the due, speedy, and faithful performance of the trust; and it shall be the duty of the person or persons so employed, to deliver the said laws and journals to the clerks of the circuit courts of the several counties within this state, who shall give receipts for the same.

Person to be employed to distribute the laws and journals.

The person employed shall give bond and security.

Laws and journals to be delivered to the clerk of the circuit court.

Sec. 5. It shall be the duty of the secretary of state to cause the said laws and journals to be distributed in the several counties in this state, in the manner hereinafter mentioned; and for

Secretary of state to apportion the number of copies to be delivered to each clerk.

that purpose he shall apportion the proper number of copies to be delivered to each clerk of the circuit courts.

Manner of distributing the laws and journals.

SEC. 6. The said laws and journals shall be distributed in the following manner, to wit: one copy of the laws to the governor, one to the lieutenant governor, one to the secretary of state, one to each judge of the supreme court, one to the chancellor of the state, one to each judge of probate, one to each justice of the county court, one to each justice of the peace, one to the attorney general and each district attorney, one to each member of the general assembly, one to each sheriff and coroner, one to the clerk of each court of record within this state, one to the secretary of the senate, one to the clerk of the house of representatives, one to each county surveyor, one to the state treasurer, one to the auditor of public accounts, one to each county treasurer, one to each commissioner of roads, and one to each assessor and collector; and one copy of the journals of each house to the governor, one to the lieutenant governor, one to the secretary of state, one to each member of the general assembly, one to the secretary of the senate, one to the clerk of the house of representatives, and the residue shall be apportioned among the several counties, for the use of such of the citizens thereof as may apply for them: *Provided, however*, That no person shall receive more than one copy of the laws and of the journals of each house.

Commencement.

SEC. 7. That this act be in force from and after the passage thereof.

CHAPTER 50.

An act, to provide for a contingent fund of the executive department, and for the publication and distribution of the laws and journals.

Passed January 21, 1823.

Fifteen hundred dollars annually appropriated for the contingent expenses of the executive department.

SEC. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi in general assembly convened*, That a sum not exceeding fifteen hundred dollars be annually appropriated for the use of the executive department of government for the contingent expenses thereof, to be accounted for by the governor to the general assembly at each session thereof; and it shall be the duty of the auditor of public accounts from time to time, on the certificate of the governor, that he has need of any sum of money, to issue his warrant on the treasury of this state therefor: *Provided*, that in no year, the amount certified for, shall exceed the aforesaid sum.

CHAPTER 51.

An act, concerning the appointment and duties of treasurer, and auditor of public accounts.

Passed, June 18, 1822.

Sec. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi, in general assembly convened,* That there shall be appointed and commissioned in the manner directed in the constitution, a state treasurer and an auditor of public accounts, who shall, severally, continue in office one year from the time of their appointment, unless sooner removed; they shall keep their offices at the place designated by law, for the sitting of the general assembly; and before either of them enter on the duties of his office, he shall take the oath prescribed in the constitution,* before a judge of the supreme court, justice of the county court, or a justice of the peace, of any county within this state, and enter into bond with two or more good and sufficient securities, to be approved by the governor, in the following penalties, to wit: The treasurer, in the penalty of sixty thousand dollars, and the auditor of public accounts in the penalty of ten thousand dollars, payable to the governor of the state for the time being, and his successors in office, conditioned as herein after directed.

Appointment of state treasurer and auditor of public accounts.

Oath.

(*See chap 55, sec. 3.)

Bonds and securities.

Penalty of their bonds.

Sec. 2. The condition of the treasurer's bond shall be in the form, or to the effect following, to wit: "The condition of the above obligation is such, that whereas, the above bound A. B. was on the —— day of ——— duly elected, by the joint vote of both houses of the general assembly, treasurer of the state of Mississippi, for the term of one year from the date of said appointment: *Now therefore*, if the said A. B. shall, from time to time, and at all times, render a just and true account to the general assembly of the state of Mississippi, when by them thereunto required, of all the moneys, securities, stock, and other property of the said state, which shall come to his hands, or be committed to his charge, and deliver the moneys, securities, stock and other property of the said state, in his hands, together with all documents, instruments of writing, papers and books belonging to, or for the use of the said state, to his successor in office; and shall, well and truly, honestly and faithfully, perform all the duties of his office during his continuance therein; and shall answer for all unlawful appropriations, waste, embezzlement, or destruction of the said moneys, securities, stock, property, documents, instruments of writing, papers or books, which shall be made, done, or committed by him, or by any person or persons by him employed in the said office, then this obligation to be void, otherwise, to be, and remain in full force and virtue." And the condition of the bond required to be given by the auditor of public accounts, shall be in the form, or to the effect following: "The condition of the above obligation is such, that whereas, the above bound A. B. was, on the —— day of ——— duly elected by the joint vote of both houses of the general as-

Condition of the treasurer's bond.

Condition of the auditor's bond.

sembly, auditor of public accounts of the state of Mississippi, for the term of one year from the date of said appointment: *Now therefore*, if the said A. B. shall faithfully, impartially, and without delay, grant his warrant or warrants on the state treasurer, for all sums of money due, and payable by law, out of any moneys in the treasury not otherwise appropriated, on the application of any person or persons lawfully entitled to such warrant or warrants; and shall, from time to time, and at all times, render a just and true account of all such warrants, in regular order, and of all other proceedings in his office, to the general assembly of the state, when thereunto required; and shall carefully keep and preserve the books, records, papers and other things belonging to his office, and deliver the same without injury or damage to his successor in office; and further, shall well and truly, do and perform all other duties required by law, of the auditor of public accounts, during his continuance in said office, then this obligation to be void, otherwise, to be and remain in full force and virtue." Which bonds shall, severally, be submitted to the governor, and his approbation of the sureties therein named endorsed thereon, and the same, together with a certificate of the oath of office, shall be deposited in the office of the secretary of state, there to be recorded, and safely kept and preserved; and said bonds shall not be void on the first recovery, but may be put in suit and prosecuted from time to time, at the costs and charges of any party injured, until the whole amount of the penalty thereof be recovered. An authenticated copy of any such bond shall be received in evidence, in any court of law or equity in this state, in the same manner as the original would be, if it were present in court.

Bonds to be submitted to the governor and deposited in the office of the secretary of state.

Authenticated copy to be received in evidence.

Not to be commissioned until bond is deposited.

SEC. 3. No commission shall issue to a state treasurer or auditor of public accounts, until bond and security be given, approved and deposited in the office of the secretary of state, as herein before required; and if any state treasurer or auditor of public accounts, elect, shall neglect or refuse to give bond and security as aforesaid, for the space of ten days after he shall have been duly elected, such election is hereby declared absolutely null and void; and the general assembly, if in session, shall, as soon thereafter as may be, proceed by joint ballot to the election of a person to supply the vacancy occasioned by such neglect or refusal; and if the general assembly should not be in session, such vacancy shall be filled by the governor, as in other cases. And in all cases, where a state treasurer or auditor of public accounts shall be appointed by the governor, in the recess of the general assembly, the person so appointed, shall give bond and security, in conformity to the provisions of this act.

Election void if bond and security be not given within ten days.

Duties of the treasurer.

SEC. 4. It shall be the duty of the state treasurer to receive and keep the moneys of the state; to disburse the same agreeably to law, and take receipts for all moneys which he shall disburse; and he shall keep regular accounts of the receipts and expenditures of the public money. He shall open an account in his books, in the name of the state of Mississippi, in which account he shall enter the amount of all money, stock, securities and other property, in the treasury, and which may, at any time, be received by him; and he shall also, open an account in the books of the treasury, for all appropriations of money made by law, so that the appropriations of money, and the application thereof, conformably thereto, may clearly and distinctly appear on the books of the treasury; and it shall be the duty of the treasurer to pay the salaries of all public officers entitled thereto, quarter yearly, unless otherwise provided for by law.

Not to pay or receive money but on warrant from the auditor, unless, &c.

Sec. 5. It shall not be lawful for the treasurer to pay or receive any money, on account of the state, but on warrant or certificate from the auditor of public accounts, unless in case where any future act of the general assembly shall, in express words, and not by inference, or implication only, declare that in that particular case, it is to be understood as the intention, that the claim specified by such act, shall not be audited in the regular course.

(*The time changed: see chap. 7 sec. 7.)

Auditor to number each warrant from number one progressively.

Sec. 6. The fiscal year for this state shall commence on the first day of *November* in every year, and terminate on the first day of *November* next ensuing,* and the auditor of public accounts shall begin on the first day of such year, annually, and number each warrant on the treasury for the payment of money, from number one, and so on progressively, until the end of said year.

Treasurer and auditor to make a report annually to the general assembly.

Sec. 7. The state treasurer and auditor of public accounts, respectively, shall, annually, at the commencement of every session of the general assembly, make to them a detailed report of the receipts and expenditures of the year. The report of the auditor of public accounts shall be accompanied with such remarks by him, as may serve to explain the same, to point out any defects, if such there be, in the existing revenue laws, and to suggest the proper remedies therefor, together with such plans as he may deem advisable for improving or increasing the revenue. And, whenever the revenue is likely to prove insufficient for the expenditure of the state, the state treasurer shall subjoin to his annual report such recommendations to the general assembly, of new subjects of taxation, or of additional taxes on the old, as may in his opinion be best suited to supply the deficiency.

Books of the treasury to state separately and distinctly, on what account money is received.

Sec. 8. It shall be the duty of the state treasurer to state in the books of the treasury, separately and distinctly, the amount of moneys which he shall receive for taxes, debts, impositions, fines, penalties and forfeitures, or on any other account whatsoever, for or in behalf of this state, and also an account of the sums he shall pay out of the same; according to law; so that the nett produce of the whole revenue, and every branch thereof, Also the sums paid out of the same.

and the amount of disbursements in payment of the several demands on the treasury, may clearly and distinctly appear.

Tenor of warrants drawn on the treasury.

Sec. 9. All warrants drawn by the auditor of public accounts upon the treasury, shall express by reference to some one general head of expenditure, the cause for which they are drawn; and where the said warrants are drawn for sums chargeable upon the revenue of a different year from that out of which they are paid, the same shall be so expressed, and all certificates or receipt warrants to the treasurer, to receive any money due to the treasury, shall express upon the face thereof, the particular head of general revenue, on account of which such sum is due; and when the same is due for the revenue of the past year, that also shall be expressed upon the face of such certfiicates or receipt warrants.

Of receipt-warrants.

Duties of the auditor.

Sec. 10. It shall be the duty of the auditor of public accounts to examine, state, settle and audit all accounts, claims or demands whatsoever, against the state, arising under any act or resolution of the general assembly, and to grant to every claimant authorised to receive the same, a warrant on the state treasurer, under his hand and seal of office, making due entry and register of all his proceedings in a book to be kept for that purpose, and carefully arranging, filing, and preserving in his office, all accounts, receipts, vouchers and papers, touching the same; to examine, settle, and audit the accounts of all public debtors, collectors of any tax or revenue of the state, and payable to the state treasurer, to call upon all such debtors to render accounts, and pay into the treasury all sums and balances due, and on failure so to do, to institute proceedings against them according to law; to require information on oath from any person or persons, party or privy to any matter relative to any account under his examination, and material for his information; to state and keep the accounts, so as to shew the amount of all warrants by him drawn on the treasurer, for what services or articles of public expense they were given; and to lay before the general assembly, annually, and as often as thereto required, the general accounts, together with an account of all balances due to and from the state.

To draw special warrants when required.

Sec. 11. It shall be the duty of the auditor of public accounts, to draw special warrants on the state treasurer when he shall be thereto required, for all moneys which by law are directed to be paid out of the state treasury by special warrant only, which warrant shall express on what particular account such money is due, or paid by the state. And it shall be the duty of the state treasurer to examine whether such warrant has been issued agreeably to law, before he shall pay the same; and after making due examination, if he shall find such warrant has been issued agreeably to law, he shall pay such warrant to the person legally entitled to receive the same, taking his or her receipt thereon, and shall also make a proper entry in his books of each and every such warrant, and shall keep the same regularly filed in his office. And the auditor of public accounts shall take a receipt for every warrant issued by him, and keep the same regularly filed in his office.

To take a receipt for every warrant issued.

SEC. 12. The auditor of public accounts shall not issue any warrant upon any allowance made to, or claim in favor of any person, his agent or assignee, who may be a debtor to the state; but shall allow such debtor a credit on his account, for such allowance or claim, and it shall be his duty to furnish the state treasurer, monthly, with an account of all warrants on the treasury which he shall have issued during the preceding month.

Not to issue a warrant in favor of a debtor to the state.

To furnish the treasurer, monthly, an account of the warrants issued.

SEC. 13. If the state treasurer shall misapply, waste, or embezzle any money, stock, securities, or other property in the treasury, it shall be the duty of the attorney general, or district attorney of the proper district, to proceed against such defaulting treasurer and his securities, for the amount of money, stock, securities, or other property so misapplied, wasted, or embezzled, by motion, in the name of the governor of the state for the time being, in the circuit court of the county wherein the seat of government is situated, ten days' previous notice of such motion being first given to the treasurer and his securities; and the court may, on such motion, direct a jury to be empanneled, *instanter*, for the trial of the issue, if the defendants appear and plead; or to inquire of damages, if the defendants make default; and if on such trial, the treasurer shall be convicted, he and his securities shall be adjudged to pay double damage, and moreover, such treasurer shall be thereby rendered incapable, thereafter, of holding any office of profit or honor, under this state.

Mode of proceeding against the treasurer for misapplying, wasting or embezzling property in the treasury.

SEC. 14. The governor shall have the superintendance of the offices of the state treasurer and auditor of public accounts, during the recess of the general assembly, and he shall take care that they respectively perform the duties required of them by law, without fraud, partiality or delay; and if it shall satisfactorily appear to him, at any time, that the money, stock, securities or other property of the state, in the treasury has been misapplied, wasted or embezzled, he shall, direct the attorney general or district attorney, to proceed according to the provisions of this act, against the defaulter. It shall be the duty of the state treasurer and auditor of public accounts, to furnish to the governor from time to time, when thereto required, a statement of the situation of the public finances, and of the proceedings in their respective offices.

Governor to have the superintendance of the offices of treasurer and auditor during the recess of the general assembly.

Treasurer and auditor to furnish the governor, when required, a statement of the situation of the finances.

SEC. 15. The auditor of public accounts shall be, and he is hereby authorised and required to make an allowance to any assessor and collector of the revenue, for any moneys with which he may stand charged, and which may be made satisfactorily to appear was improperly assessed, and when any assessor and col-

Auditor to make allowance to assessors and collectors for money improperly assessed, &c.

Assessors and collectors may adjourn sale for want of bidders.

lector hath, or hereafter may use due diligence to collect the tax from any person or persons, by exposing for sale, his, her or their lands or tenements, and the same shall not have been sold for want of bidders, such collector shall not be bound to account for the same, until he may have collected such tax: *Provided*, That where any collector shall have advertised for sale any lands or tenements to raise the taxes due, and the lands or tenements thus advertised could not be sold for want of bidders, that he may adjourn any such sale from time to time, until the same shall be sold; and any sale, made on any adjourned day, shall be valid to all intents and purposes, as if the same had been made on the day first mentioned for the sale thereof.

In what manner any allowance made by a court shall be authenticated.

Duty of the auditor, if he doubt the propriety of such allowance.

Sec. 16. When any allowance shall be made by any court to any of its officers, or to any other person, the clerk of such court shall make out a fair copy of the account so allowed, and certify such allowance under his hand and seal of office, reciting the statute under which it was made: and, if the auditor of public accounts shall have doubts of the propriety of any such allowance made as aforesasd, he shall not issue his warrant therefor on the state treasurer, but he shall report the same to the general assembly, at their next succeeding session; and no court shall be authorised to make any allowance unless the same be provided for by some act or resolution of the general assembly.

Auditor to prescribe official forms.

Books and accounts of the treasurer, &c. shall be open to his inspection.

Sec. 17. It shall be the duty of the auditor of public accounts, to prescribe all official forms of papers necessary to be used in collecting the public revenue, and also, the manner and form of keeping the accounts of persons employed therein. The books and accounts of the state treasurer, and all other persons concerned in the collecting and safe keeping of the public moneys or funds of this state, shall, at all seasonable times, be open to the examination and inspection of the auditor of public accounts.

Treasurer to furnish auditor monthly with a list of receipts.

Sec. 18. The treasurer shall furnish the auditor of public accounts, during each fiscal year, with a monthly list of receipts at the treasury, numbered as the warrants, and stating in whose name the several receipts have been given, their respective dates, amounts and numbers.

Auditor procure a seal of office.

Also books and stationary for his office.

Sec. 19. The auditor of public accounts shall procure a seal of office, with the words "Auditor's office, state of Mississippi," around the margin, and an Eagle in the centre thereof. He shall also provide necessary books and stationary for his office; and the accounts for said seal, and all books and stationary as aforesaid, shall be examined, and if found correct, allowed by the governor; and being certified by him, shall be paid to the auditor of public accounts by the state treasurer, on such certificate without warrant.

CHAPTER 52.

An act concerning the appointment and duties of county treasurers.

Passed June 18, 1822.

Appointment of county treasurers.

Sec. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi in general assembly convened,* That there shall be commissioned by the governor, on the recommendation of the county court of the several counties within this state, a suitable person to hold the office of county treasurer, in each county, who shall continue in office two years from the time of his appointment, unless sooner removed, and shall reside in the county for which he is appointed; and before he enter on the duties of his office he shall take and subscribe the oath prescribed in the constitution,* before any justice of the county court or justice of the peace of the county for which he is appointed, which shall be certified by the justice administering the same, on the back of his commission; and shall also give bond with two or more good and sufficient securties, to be approved by the county court, or the presiding justice thereof, in vacation, in such penalty as the county courts, or the presiding justice thereof may direct, payable to the presiding justice of the county court of the proper county for the time being, and his successors in office, with the like condition, *mutatis mutandis,* as is directed by law to be given in the bond of the state treasurer; which bond, with the approbation of the sureties therein named endorsed thereon, shall, together with the endorsement, be recorded in the office of the clerk of the county court of the county for which the said county treasurer is appointed, and the bond filed in the same office, there to be safely kept and preserved, and may be sued, in the like manner, and with like effect, in all respects, as the bond given by the state treasurer.

Oath.

(*See chap. 55, sec. 3.)

Bond and security.

Appointment void, if bond be not given and oath taken in ten days after they are appointed.

Sec. 2. If any county treasurer shall neglect or refuse to give bond and security, and take the oath of office, as aforesaid, for the space of ten days after he shall have been so appointed, such appointment is hereby declared absolutely null and void; and the county court shall, as soon thereafter as may be, proceed to recommend some other suitable person to the governor, to supply the vacancy occasioned by such neglect or refusal.

Duties of county treasurer.

Sec. 3. It shall be the duty of each county treasurer to receive and keep the moneys of the county, to disburse the same agreeably to law, and take receipts for all moneys he shall so disburse; and he shall keep regular accounts of the receipts and expenditures of the funds of the county, and of all debts due to, or from, the county for which he is treasurer, and direct prosecutions according to law, for all debts that are or shall be due to the county for which he is appointed.

To make a detailed report of

Sec. 4. It shall be the duty of the several county treasurers, to make a detailed report at every regular term of the county receipts and disbursements at each term of the county court.

court of his county, of all moneys received by him, and the disbursements thereof, and of all debts due to and from the county, and of all other proceedings in his office, so that the receipts into the treasury, and the amount of disbursements, together with the debts due to and from the county, may clearly and distinctly appear; and if any county treasurer shall neglect or refuse to make such report, he shall forfeit and pay the sum of two hundred dollars for every such neglect or refusal, to be recovered by action of debt or information, in the name of the presiding justice of the county court of such county, in any court of competent jurisdiction, and applied to the use of the county.

Penalty for neglect.

To examine accounts, dockets and records of clerks and sheriffs.

SEC. 5. The county treasurer of each county is hereby empowered and required to examine the accounts, dockets and records of the clerks and sheriffs of his county, for the purpose of ascertaining whether any moneys, of right belonging to such county, may be in their hands.

In what manner allowances made by any court shall be certified.

County treasurer doubting the propriety of an allowance shall make report thereof to the county court.

No money to be paid unless allowed by the county court or officer lawfully authorised.

SEC. 6. When any allowance shall be made by any court to any of its officers or any other person, payable out of the county treasury, the clerk of such court shall make out a fair copy of the account so allowed, and certify such allowance under his hand and seal of office, and recite therein under what statute it was made; and if the county treasurer shall have any doubt of the propriety of any such allowance made as aforesaid, he shall not pay the same, but shall make report thereof to the next succeeding term of the county court, for their consideration; and no court shall be authorised to make any allowance payable out of the county treasury, unless the same be provided for by some act or resolution of the general assembly; and no money shall be paid out of the county treasury to any person or persons, unless the same shall have been previously allowed by the county court of the proper county, or some other court or officer lawfully authorised to make such allowance, and duly certified.

Mode of proceeding against county treasurers for misapplying, wasting or embezzling the money in the treasury.

SEC. 7. If any county treasurer shall misapply, waste or embezzle any money in the treasury of the county, it shall be the duty of the attorney general or district attorney of the proper district, to proceed against such defaulting treasurer and his securities, for the amount of the money so misapplied, wasted or embezzled, by motion, in the name of the presiding justice of the county court, for the time being, in the circuit court of the county wherein such default was made, ten days previous notice of such motion being first given to such county treasurer and his securities; and the court may on such motion, direct a jury to be empanneled *instanter*, for the trial of the issue, if the defendants appear and plead, or to inquire of damages if the defendants make default; and if on such trial the treasurer shall be convicted, he and his securities shall be adjudged to pay double damages; and, moreover, such county treasurer shall be thereby rendered incapable thereafter of holding any office of honor or profit under this state.

Sec. 8. It shall be the duty of the clerks of the circuit and county courts of the several counties in this state, within ten days after the adjournment of their courts respectively, to return to the county treasurer of the proper county, a list containing a statement of all fines, penalties and forfeitures imposed by said courts respectively, which may be payable in whole or in part into the county treasury of such county, and a list of all the suits commenced in said courts, on which a tax is imposed by law, not contained in any previous return, together with the name of the sheriff, clerk or other officer who hath received any such fines, penalties, forfeitures, and tax on law process, or become liable to pay the same by law, in order to enable said county treasurer to collect the same according to law; and every clerk failing to perform the aforesaid duty, shall forfeit and pay the sum of five hundred dollars, to be recovered by the county treasurer of the proper county, by action of debt or information in any court of competent jurisdiction, and paid into the county treasury for county purposes.

Clerks to return to the county treasurer, a list of fines &c. imposed.

Also a list of suits on which a tax is imposed.

Penalty on failure.

Sec. 9. If any sheriff, clerk or other officer, who hath received, or become liable by law, for the payment of any fine, penalty, forfeitures, or tax on law process, and shall not within twenty days after his having received the same, or become so liable, account with the county treasurer of the proper county, and pay the same into the treasury thereof, then, and in every such case, it shall and may be lawful for the said treasurer, upon motion made in the circuit or county court of said county, as the case may require, to demand judgment against such sheriff, clerk or other officer and their securities, for the amount of such fines, penalties, forfeitures, or tax as aforesaid, and such court is hereby required to give judgment accordingly and award execution thereon: *Provided*, That such sheriff, clerk or other officer have ten days previous notice in writing of every such motion.

Mode of proceeding against officers for retaining fines&c. which they have collected or become liable to pay.

Sec. 10. It shall be the duty of the clerks of the several county courts within twenty days after the adjournment of each regular term thereof, to account on oath to the county treasurer, and pay over to him the amount of all sums received by such clerk on account of tavern licenses; and if any clerk shall neglect or refuse so to account, and pay over the amount of all such money received by him, as aforesaid, then and in that case, it shall and may be lawful for the said county treasurer, on motion to the circuit court of the proper county, (ten days previous notice of such motion being given in writing to said clerk,) to demand judgment against such clerk and his securities, for double the amount of all such sums, which he shall ascertain from the best information he can obtain of the same; and such court is hereby authorized and required to give judgment accordingly, and award execution thereon.

Clerks of the county courts to account for money received for tavern licenses.

How proceeded against for neglect.

Mode of proceeding against assessors and collectors failing to pay money due to the county treasury

SEC. 11. If any assessor and collector of taxes shall fail to pay into the county treasury any money which may be due from him as collector, which he is required to pay into the county treasury, on or before the time the same may become payable by law, the county treasurer shall immediately notify the attorney general, or district attorney of the proper district, of such defaulting collector, whose duty it shall be to proceed against the defaulter and his securities, their executors or administrators, by giving to them twenty days previous notice in writing, that he will on the first or some subsequent day of the next term of the circuit court, to be held in the county where such delinquency may happen, move for judgment against them for the amount that may appear to be due; and the said court is hereby required to grant judgment and award execution for the amount certified by the county treasurer of the proper county, to be due from such defaulting collector; and no discounts shall be admitted by the court before whom the motion is made, except such as shall in like manner be certified as having been allowed by the county court. And the clerk of the court shall endorse on every such execution, that "*no security of any kind is to be taken*;" and the sheriff or other officer to whom the same may be directed shall govern himself accordingly.

Attorney general and district attorneys to prosecute defaulting officers

SEC. 12. It shall be the duty of the attorney general, and district attorneys in their respective districts, to attend to the prosecution of all suits against any defaulting officers named in this act.

Mode of proceeding when a county treasurer has been convicted of violating his duties.

SEC. 13. If the county treasurer of any county within this state, should be convicted of having violated any of the duties enjoined on him by this act, the county court of the proper county shall certify the same to the governor, and at the same time, recommend a suitable person to fill the office of county treasurer, in lieu of the person so convicted of a violation of duty; and the governor shall thereupon revoke and annul the commission of the treasurer so reported, and proceed to fill the vacancy according to the recommendation of the county court.

CHAPTER 53.

An act, prescribing the mode of ascertaining and assessing the taxable property within this state, and for collecting the public revenue.

Passed June 25, 1822.

Manner of assessing and collecting the state tax.

SEC. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi, in general assembly convend*, That a tax shall be assessed and collected in each and every year, and paid into the treasury of the state, on the persons and property, and in the manner hereinafter mentioned, to wit: The sum of twenty cents for every hundred dollars value shall be paid on all lands lying within this state, to which the Indian title has been extinguished, except such lands as belong to the United States, and such lands as have been sold by congress, and the term of five years not having expired since the respective days of sale thereof; and the value of the lands so taxed shall be ascertained by the assessors of the several counties, according to the regulations hereinafter expressed: class number one, shall consist of all lands lying within eight miles of the city of Natchez, the first quality of which shall be rated at twelve dollars per acre; the second quality at eight dollars per acre; and the third quality at three dollars per acre: class number two, shall consist of all lands lying within fourteen miles of the Mississippi river, and not included in class number one, the first quality of which shall be rated at seven dollars per acre; the second quality at four dollars per acre; and the third quality at two dollars per acre: class number three shall consist of all lands more than fourteen, and not above twenty miles from the Mississippi river, the first quality of which shall be rated at five dollars per acre; the second quality at three dollars per acre; and the third quality at two dollars per acre: class number four, shall consist of all lands lying more than twenty miles from the Mississippi river, and west of the eastern boundary of the state, the first qaulity of which shall be rated at four dollars per acre, the second quality at three dollars per acre, and the third quality at two dollars per acre: which lands shall be classed on oath, by the person giving in the same; the sum of seventy-five cents shall be assessed and collected on each slave; the sum of seventy-five cents on every free white male, above the age of twenty-one, and under fifty years; the sum of three dollars on each and every free man of color, over the age of twenty-one, and under fifty years: the sum of twenty cents on every hundred dollars value of lands, lots and building, within any city, town or borough, to be estimated on oath by the person giving in the same; the sum of twenty cents per hundred dollars upon the amount of the sales of merchandise, within the year immediately preceding the first day of January of each and every year; and the assessors and collectors of the different counties, in taking in the list of taxable property, shall have reference to that day; the sum of one dollar per wheel on every pleasurable carriage, the sum of fifty cents per wheel upon each carriage called dearborn, and which is kept as a pleasurable carriage, the sum of twenty-five cents on every hundred dollars of the capital stock actually subscribed for in each incorporated bank in this state, to be returned on oath by the cashier or president of such bank: *Provided*, That this act shall not be so construed as to authorise the assessing and collecting of any tax on the estate, real or personal, of any religious society, or the real or personal estate of any institution for the education of youth, or the maintenance of schools, or for charitable purposes, or on any estate real or personal, belonging to any incorporated city or town, or a poll tax on any officer or soldier, in the army or navy of the United States.

On lands.

On persons.

On lands and buildings in city or town.

On the amount of the sales of merchandise.

On carriages.

On bank stock.

Certain property exempted from taxation.

Amount of license on billiard tables.

SEC. 2. Every person who shall set up or use a billiard table for play, shall, previous to his obtaining a license therefor, as provided by law, pay to the clerk of the court, the sum of five hundred dollars for a license, annually, or one half this sum for a license for six months, at his or her option, or be liable to all the pains and penalties prescribed by law.

Assessors and collectors to be appointed.

To take oath and enter into bond. (*See chap. 55, sec. 3.)

Condition of the bond.

An authenticated copy of the bond to be received in evidence.

SEC. 3. There shall be annually appointed by the governor, a person of honesty, probity and good demeanor, to be assessor and collector of taxes, for each county; who shall, at the time of his appointment, be resident in the county for which he is appointed, and before he enter on the duties of his office, shall take and subscribe the oath prescribed in the constitution* before some justice of the county court or justice of the peace of his county; and shall enter into bond, with two or more good and sufficient securities, who shall be residents of the same county, to be approved by the county court of the proper county, in term time, or by a majority of the justices thereof, in vacation, payable to the governor of the state for the time being, and his successors in office, in the penalty hereinafter prescribed; the condition of which bond shall be, in the form, or to the effect following: "The condition of the above obligation is such, that whereas, the above named A. B. hath been duly appointed and commissioned by the governor, assessor and collector of taxes, for the county of ——— : *Now therefore*, if the said A. B. shall faithfully and impartially assess all persons and property within his county, which shall or may be taxable by law, and shall well and truly collect, and punctually pay into the treasury of the state, or county treasury, as the case may require, all the state and county taxes, which shall be assessed and collected by him, according to law; and shall do and perform all other duties which pertain to his said office of assessor and collector of taxes, during his continuance therein, then this obligation to be void, otherwise to remain in full force and virtue;" which bond, with a certificate that the securities therein named, have been approved as aforesaid, and the oath of office thereon endorsed, shall be recorded in the office of the clerk of the county court, who shall immediately thereafter deposite the same in the office of the secretary of state, where it shall be safely kept and preserved. And such bond shall not be void on the first recovery, but may be put in suit and prosecuted from time to time, at the costs and charges of any party injured, until the whole penalty thereof be recovered; an authenticated copy of any such bond shall be received in evidence in any court of law or equity in this state, in the same manner as the original would be, if it were present in court.

Penalties of the bond for the several counties.

SEC. 4. The assessors and collectors of taxes of the several counties of this state, shall respectively execute bond with security as aforesaid, in the following penalties, to wit: The assessor and collector of Adams county in twenty-five thousand dollars; the assessor and collector of the county of Wilkinson in fourteen thousand dollars; the assessor and collector for the county of Claiborne in ten thousand dollars; the assessor and collector of the county of Jefferson in ten thousand dollars; the assessor and collector of the county of Franklin, in four thousand dollars; the assessor and collector of the county of Warren, in six thousand dollars; the assessor and collector of the county of Amite, in eight thousand dollars; the assessor and collector of the county of Pike, in six thousand dollars; the assessor and collector of the county of Lawrence, in six thousand dollars; the assessor and collector of the county of Marion, in four thousand dollars; the assessor and collector of the county of Covington, in four thousand dollars; the assessor and collector of the county of Greene, in four thousand dollars; the assessor and collector of the county of Perry in four thousand dollars; the assessor and collector of the county of Jackson, in four thousand dollars; the assessor and collector of the county of Wayne, in four thousand dollars; the assessor and collector of the county of Hancock, in four thousand dollars; the assessor and collector of the county of Monroe, in ten thousand dollars; the assessor and collector of the county of Hinds, in four thousand dollars; the assessor and collector of taxes, for each and every new county which shall hereafter be erected and organised, in four thousand dollars, until it shall be otherwise provided for by law.

Penalty for executing office without giving bond and taking oath.

SEC. 5. If any assessor and collecor of taxes, shall presume to execute the duties of his office, before he shall have given bond and taken the oath of office, agreeably to the directions of this act, all such his acts and proceedings done under color of office, shall be absolutely void, and he shall, for such offence be liable to be indicted for a misdemeanor, and on conviction thereof before any court of competent jurisdiction, fined in any sum not exceeding one thousand dollars.

Persons not to be appointed who are indebted to the state for money collected.

SEC. 6. No person shall hereafter be appointed assessor and collector of taxes in any county within this state, who shall be indebted to the state, for money before that time collected by such person, which by law ought to have been paid into the public treasury.

Every person to render a list of taxable property which he possessed on the first day of January.

SEC. 7. Every person, who on the first day of January in each and every year, shall be possessed of any property real or personal, either as agent, attorney, administrator, executor, or guardian, or in his own right, or in right of his wife, if such property be subject to taxation under this act, shall render to the assessor and collector of taxes of the county where such property is found or situated, a true and perfect list thereof, in the manner directed by this act, and the person rendering such list shall be liable for all taxes which may be assessed thereon; and any person who shall sell or convey away any property, either real or personal, of which he or she was possessed on the first day of January, as aforesaid, shall render a list of the same, with his or her other taxable property for that year.

Assessor and collector to apply for the list.

SEC. 8. It shall be the duty of every assessor and collector of taxes, to apply to every person or resident within his county, who hath therein any taxable property for a list thereof, which list shall contain an enumeration of all such property in his or her possession as aforesaid, within said county; and in the account of lands, a particular description of the situation and quality of the same, and to which class it belongs, as also each lot of land within any city, town or borough, with the dimensions of, and improvements thereon; also the amount of his or her sales of all merchandise sold within the year ending on the first day of January next preceding the time of rendering such list; and the assessor and collector shall state in the last column of his list the total amount of taxes due from each person.

What shall be contained in the list.

Time and manner of applying for the list.

SEC. 9. The assessor and collector of taxes in each county, shall apply to every person for a list of his or her taxable property within the county, at any time between the first day of March and the first day of June in each and every year, and such application shall be made by the assessor and collector, in his own proper person, or by a written notice left at the usual place of residence of such person, requiring him or her to render a list of property in his or her possession, liable to taxation; and in case he or she, after such written or personal application of the assessor and collector, shall neglect or refuse to deliver to him, the list of property in his or her possession, liable to taxation as aforesaid, within the time limited for taking such list, the person so refusing or neglecting, shall pay double taxes on all such property as he or she may possess, according to the best information concerning the same, which the assessor and collector can obtain: and every person rendering a list of his or her property liable to taxation, shall take the following oath or affirmation, to wit: "I, A. B. do solemnly swear, (or affirm) that this list contains a true account and description of all the property, real and personal, subject to taxation, of which I am possessed in the county of ———, either in my own right, or in right of my wife, (if he have any,) or as agent, attorney, executor, administrator or guardian, for the use of any other person or persons: So help me God." Which oath shall be administered by the assessor and collector; or, by any justice of the peace, and certified on said list; and any person who shall possess taxable property in any county other than that of his or her residence, and shall have no agent or attorney therein, shall transmit a list of such property, sworn to and certified, as aforesaid, to the assessor and collector of the proper county; but if the county line shall run through any tract of land, whereon any person resides, the owner or proprietor shall give in the same to the assessor and collector of the county of his or her residence; and every person who shall refuse or neglect to comply with any of the requisitions herein contained, shall be doubly taxed in manner aforesaid.

Oath to be taken by the person rendering a list.

List of property in any county in which the owner does not reside.

Sec. 10. Every assessor and collector of taxes shall complete the list of taxable property in his county, within the time prescribed in the preceding section; and shall make out three complete lists of all taxable property, together with the names of the persons chargeable with the taxes thereon, and the amount of the taxes due from each person; one of which lists he shall keep for his own use as collector of taxes; one copy of the same he shall deposite in the office of the county treasurer of the proper county, for the inspection of any person who may choose to examine the same, and one other list he shall deposite in the office of the auditor of public accounts, on before the first day of July ——; and any assessor and collector failing to comply with either of the foregoing requisitions, shall forfeit and pay the sum of five hundred dollars, recoverable by action of debt in any court of competent jurisdiction, *one moiety thereof to the person suing for the same, and the other moiety to the state, for the use and benefit of the literary fund.**

Penalty on assessor and collector failing to deposite a list of taxable property with the auditor and county treasurer.

(*Repealed, see chap. 7, sec. 5)

Sec. 11. If any assessor and collector of taxes shall take or return as aforesaid, a false list of the assessment of taxes made in his county, with intent to defraud the revenue of the state, the assessor and collector so offending, shall, on conviction thereof, for every such offence, forfeit and pay the sum of five hundred dollars to be recovered by action of debt or information, in any court of competent jurisdiction, in the name of any person who will sue for the same; one moiety thereof to such person, and the other moiety to the state, for the use and benefit of the literary fund; and shall, moreover, be rendered incapable thereafter, of holding the office of assessor and collector of taxes, in any county within this state.

Penalty on assessor and collector for returning a false list of assessments, with intent to defraud the revenue.

Sec. 12. When any assessor and collector shall have reason to suspect or believe that any merchant or vender of merchandise, or other person is about to leave the state, after having made sale of any merchandise, and the tax on the amount of such sale not having been previously paid, the said assessor and collector shall proceed forthwith to assess and collect the same; and in case of refusal to give in the amount of such sale, or to pay the tax after demand, the said assessor and collector shall proceed as in other cases of refusal to give in taxable property, or to pay the tax at the time required by law.

Tax to be collected when a person having sold merchandise is about to leave the state.

Sec. 13. If any merchant, vender of merchandise or other person, shall actually leave this state without having given in to the assessor and collector the amount of all sales of merchandise previously made by him or her, and paid the tax which has accrued thereon by law, the said assessor and collector shall immediately or as soon thereafter as may be, proceed to assess the said tax, upon the best information he can obtain concerning the same, and collect a double tax thereon, by distress and sale of such property as may be found belonging to such merchant, vender of merchandise, or other person.

Mode of proceeding when the person has left the state without paying the tax.

Taxable property coming into the state between the first of January and the first of March, may be assessed.

SEC. 14. The assessor and collector of taxes shall have power to assess any taxable property that may come into his county between the first day of January and the first day of March in each year, under the same rules and regulations as are prescribed in other cases.

Time and manner of making distress and sale for taxes. (*Time changed to the first day of November, see chap. 7 sec. 6.)

SEC. 15. The assessors and collectors of taxes of the several counties within this state, shall have power and are hereby authorised, from and after the first day of *September** in each and every year, to make distress and sale of the goods and chattels, lands and tenements of all delinquents, who shall not have made payment of the taxes due for that year: *Provided*, That notice of such sale shall be given by advertisement at the door of the court house of the proper county, and at least two other public places within the county, at least ten days previous to the day of sale, where the distress shall be of goods and chattels; and where the delinquent has no goods and chattels within the county, then the lands and tenements of said delinquent within the county, may be sold by the assessor and collector, or so much thereof as will be sufficient to pay and satisfy the amount of taxes due from such delinquent, together with all costs and charges accruing thereon: *Provided, always*, That the assessor and collector shall give, in the nearest newspaper published in this state, in the case of residents in the same, at least three months notice previous to the sale of any real estate, and in the case of non-residents, at least six months notice of the time and place of such sale: which notice shall contain a particular description of the lands and tenements for sale, on what water course situated, and by what lands the same are bounded, and to whom the same was granted, or by whom the same may be now owned or claimed. And when real property is sold, the sale shall always be at the court house of the proper county, and there shall not be sold in one lot more than three hundred and twenty acres of land; but if one lot shall not sell for the amount of taxes due from the delinquent, together with all costs and charges that shall have accrued thereon, the assessor and collector shall sell as many lots or parts of lots, as shall raise the full amount due; but in no case shall he sell any more land than shall be sufficient to raise such sum as shall be due: and the assessor and collector shall be entitled to demand and receive from each delinquent whose property shall have been advertised as aforesaid, in addition to his compensation for assessing and collecting the taxes, a commission of five *per centum* upon the amount raised or to be raised by such sale; and when he shall sell real property, he shall receive two dollars for each deed of conveyance: *Provided*, That the person or persons whose lands may be sold for taxes under this act, shall have a right to redeem the same at any time within one year after such sale shall have been made, by repaying to the purchaser the amount by him paid, together with interest thereon at the rate of one hundred *per centum per annum*, from the day of sale until the money be repaid: *And provided also*, That if the lands of any person

When and how land sold for taxes may be redeemed.

under age, or insane, be sold, the same shall be redeemable at any time within one year after such disability be removed, upon repaying the amount that the purchaser may have paid, inclusive of subsequent taxes paid upon said land, with interest thereon at the rate of six *per centum per annum*, until the time of redemption; and the assessors and collectors shall, in all cases, upon receiving the amount of taxes due from any person or persons, specify in the receipt for the same, the property taxed, and the total amount of taxes received.

Taxes preferred to all judgments, executions &c.

Sec. 16. The taxes imposed by virtue of this act shall be preferred to all judgments, executions, incumbrances and securities whatever; and if any person between the time of rendering a list of his or her taxable property to the assessor and collector, and the time to which he is authorised to make distress, shall be about to remove without the limits of his county, the assessor and collector, upon receiving information thereof, shall immediately make distress of the goods and chattels of the person so about to remove, sufficient to satisfy the amount of taxes that he or she may owe, and sell the same upon giving the notice herein before directed in case of goods and chattels; and all taxes assessed on any person or persons under this act, shall be a lien upon his real property lying within the county in which the assessment was made, from the first day of January of that year.

Distress and sale of the goods of persons about to remove out of the county.

Assessor and collector to execute a deed of conveyance for real estate sold for taxes.

Sec. 17. Every assessor and collector of taxes who shall sell any real estate to satisfy any tax imposed by lawful authority, shall execute to the purchaser or purchasers thereof, a deed of conveyance, which deed shall be good and effectual to vest in the purchaser or purchasers, all the right, title, interest, claim and demand whatsoever, of the person from whom such taxes are due, which he or she had in and to such real estate either in law or equity, and to deliver to him or them immediate possession thereof; and in every such deed, the assessor and collector making the same, shall recite the consideration, and that the real estate thereby conveyed was sold for taxes: but no deed executed in manner aforesaid, shall be recorded until the expiration of one year from the date thereof, but may nevertheless be proven; and if the person whose estate may have been sold and conveyed as aforesaid, or his or her heirs, executors or administrators, or his or her agent or attorney, shall, within the year, tender to the purchaser or purchasers, his, her or their heirs, executors or administrators, or his, her or their agent or attorney, or in case of his, her or their absence from the state, then, to the assessor and collector of the taxes, who sold and conveyed such real estate, the consideration money paid for the same, and the amount of all subsequent taxes that shall have been paid on such real estate, with interest on all such sums, from the dates of such payments, at the rate mentioned in the fifteenth section of this act, until such tender be made, then, the deed

Not to be recorded until the expiration of one year from the date thereof.

In what case the deed shall be void and given up.

executed for such real estate thus sold and conveyed, shall be thereby vacated and made void, and the deed given up.

Mode of proceeding when assessor and collector has omitted to assess taxable property.

SEC. 18. If the assessor and collector of taxes in any county, shall have omitted or neglected to assess the taxable property, or any part thereof, of any person or persons within his county, it shall be the duty of such assessor and collector to certify the amount of tax which ought to have been assessed on such property, and the name or names of the person or persons owing or possessing the same, to his successor in office, who shall collect such tax, so omitted or neglected, to be assessed with the taxes of the succeeding year, in the same manner as if it had been assessed within the time limited by this act.

When persons liable to pay taxes shall remove from the county after being assessed, but before payment.

SEC. 19. When any person or persons liable to pay taxes, shall after having been assessed, remove from the county in which he, she, or they may have been so assessed, not having paid his, her, or their taxes, then and in such case, the assessor and collector of the county in which he, she, or they may have been assessed as aforesaid, shall, and he is hereby required to send, certified under his hand, a transcript from his tax list, to the assessor and collector of the county where such delinquent or delinquents may be, and such assessor and collector is hereby authorised upon the receipt of said transcript, to proceed to make the money by distress and sale or otherwise, and immediately transmit the amount so made, to the assessor and collector who sent the said transcript; for which services the assessor and collector making the said money shall receive the compensation allowed by law for similar services.

What shall be receivable in payment of taxes.

SEC. 20 The assessors and collectors of taxes in the several counties within this state, shall receive in payment of all state and county taxes, imposed according to law, any coin made current by the laws of the United States, and bank notes of the following banks, to wit: The bank of the state of Mississippi, and its branches, which now are, or hereafter may be established; the bank of the United States and the branches thereof; and all warrants issued by the auditor of public accounts on the treasurer of the state, shall be received in payment of state taxes, and all claims on the county treasury, certified by the proper authority, in payment of county taxes. In case either of the banks above enumerated, should hereafter fail or refuse to redeem their notes, with specie, or from any other cause, should be manifestly in doubtful circumstances, the governor shall, and he is hereby required, to make the same known, by proclamation, to the several assessors and collectors of taxes, and other officers concerned in collecting moneys accruing to the state; and the said assessors and collectors, and such other officers as aforesaid, upon receiving such information, shall not thereafter receive in payment of taxes or public dues, any note or notes issued by the bank so failing or refusing to redeem their notes with specie, or in doubtful circumstances as aforesaid; and the notes issued by such bank shall not thereafter be a legal tender in payment of any public dues accruing to this state: *Provided however*, Tnat nothing herein contained shall be construed to prevent the assessors and collectors, or other officers, from paying into the treasury as heretofore such notes as may have been received by them, in discharge of such taxes or other public dues, previously to their having information of the governor's proclamation issued as aforesaid; but the auditor of public accounts shall, before such notes be received or paid into the treasury, require such assessor and collector, or other officer to make oath that the whole amount thereof so offered by him in payment was received by him prior to his having any knowledge of such proclamation.

Penalty on assessor and collector for extortion.

SEC. 21. If any assessor and collector shall demand and receive of any person, more money than he shall be entitled to demand and receive, under color of his office, he shall forfeit and pay to the party aggrieved, three times the amount of the same so extorted, recoverable in any court in this state, having competent jurisdiction together with costs.

Allowance to be made by the county court for insolvencies.

Allowance to be certified to the auditor.

Court may grant relief to persons improperly taxed.

SEC. 22. The county court in each and every county within this state, shall, on the first Monday of October in each and every year, hold at their respective court houses, a special court for the purpose of examining the amount of insolvencies that may be returned by the assessors and collectors of their respective counties, and shall certify such allowance as to them may seem fair and just, to the auditor of public accounts, who shall allow the same so certified to the assessor and collector in the settlement of his account. The said court shall also have power to grant relief to such persons as may have been improperly taxed, or over taxed, by the assessor and collector; and upon certifying the same, as in the case of insolvencies, the auditor of public accounts shall allow the same to the assessor and collector in the settlement of his account. And if any person to whom relief may be granted in the manner aforesaid, shall not have paid the tax to the assessor and collector, so improperly taxed or overcharged, he shall be exonerated from the same; and if he shall have paid the same, the assessor and collector shall refund to him the amount thereof.

No allowance to be made for insolvencies at more than one term.

If a court should not be held the auditor may make the allowance.

SEC. 23. If the justices of the county court of any county, shall fail or neglect to hold a special court as aforesaid, it shall be the duty of the county court held next thereafter in such county, whether the same be a special or regular term, to make the allowances required in the preceding section, so far as the same shall appear to be just and equitable; but no allowance for insolvencies shall be made, at more than one term, to any assessor and collector, in any one year, and, if from any cause, a county court should not be held in any county for the purposes aforesaid, the auditor of public accounts shall be and he is hereby authorised to allow to the assessor and collector of such county, a credit in the settlement of his account, for all such insolvencies as shall be satisfactorily proven to him by such assessor and collector, and to make allowance to any person or persons who may have been improperly assessed.

County court to levy a county tax.

Sec. 24. The county courts shall, between the first day of January and the first day of June, in each and every year, at a special or regular term thereof, be and they are hereby authorised and required to levy a tax, which shall be sufficient to discharge the demands on their respective counties, upon the same persons and property as are subject to state taxes according to the assessment of that year; but the tax so levied shall not exceed one half the amount of the state tax; and the same shall be collected by the assessor and collector of each county, at the same time, and in the same manner, that taxes due to the state are collected, and shall be paid by the assessor and collector into the hands of the county treasurer, at the same time that the state taxes are required to be paid into the hands of the state treasurer; and shall be in all respects under the same regulations and restrictions, which by law are provided for the due collection and payment of the state tax, and the assessor and collector shall be allowed the same compensation for collecting the county tax as for the state tax.

Not to exceed half the amount of the state tax.

If the court fail to levy the tax prior to the first of June, a court shall be called for that purpose.

Sec. 25. If the county court of any county shall fail to levy such county tax, prior to the first day of June, in each year, it shall be the duty of the presiding justice, or if there be no presiding justice, then, of any other justice of said court, to call a court at the court house of the county, on five days notice, which it shall be the duty of the sheriff to give; and the said court so called, shall have power to levy the said tax, in the same manner as is directed in the preceding section.

Assessor and collector to ascertain the name and give information of persons retailing spiritous liquors without license.

Sec. 26. It shall be the duty of each assessor and collector of the several counties within this state, to inquire and ascertain as nearly as may be, the name or names of each and every person or persons within their respective counties, who shall retain any vinous or spiritous liquor without being licensed according to law, and give information thereof, with a list of the witnesses who can prove the same, to the attorney general, or district attorney, at the commencement of each term of the circuit court of his county, or to the nearest and most convenient justice of the peace of the county where such unlicensed person or persons have committed the offence; and it shall be the duty of the clerk of each county court within this state, on application for the same, to furnish the assessor and collector of his county with a complete list of licensed retailers of vinous and spiritous liquors within such county, shewing the commencement and termination of such licenses.

To be furnished by the clerks of the county courts with a list of licensed retailers.

County courts to direct the appropriation

Sec. 27. It shall be the duty of the county courts, respectively, to direct the appropriation of the money which may come into the county treasury: *Provided*, That the county courts shall not appropriate the funds of their counties, or any part thereof, to any objects but such as are authorised by law.

of money in the county treasury.

Sec. 28. It shall be the duty of all assessors and collectors of taxes in this state, to pay the moneys by them collected into the treasury of the state, on or before the first Monday of *November** in each and every year. And each assessor and collector shall be entitled, upon the settlement of his accounts with the auditor of public accounts, to an allowance of five *per cent.* for assessing the taxable property in his county, on the amount of such assessment: *Provided*, The said allowance shall not exceed three hundred dollars, nor be less than one hundred dollars: and for collecting the taxes so assessed, each assessor and collector shall be allowed on the amount by him collected, six *per centum*. And the same *per centum* shall be allowed to each assessor and collector, on the settlement of his accounts with the county treasurer, for assessing the county tax, as is allowed for assessing the state tax.

At what time money collected shall be paid into the treasury. *

(*Time changed to the first Monday of January. see chap. 7, sec. 6.)

Allowance for assessing and collecting the state tax.

For assessing and collecting county tax.

Sec. 29. The assessor and collector of taxes in any county, where the bank of the state of Mississippi, or its branches are, or may be located, shall assess and collect of said bank, or its branches, in his county, the tax on the amount of capital stock subscribed for on the books of said bank, or its branches.

Tax to be assessed and collected on bank stock.

Sec. 30. If any assessor and collector of taxes shall fail to pay into the state treasury, any money which may be due from him as collector, on or before the same may become payable by law, the auditor of public accounts shall immediately notify the attorney general, or district attorney, as the case may be, of such defaulting collector; whose duty it shall be to proceed against the defaulter and his securities, their executors or administrators, by giving to them twenty days' previous notice in writing, that he will, on the first, or some subsequent day of the next term of the circuit court, to be held in the county where the delinquency may happen, move for judgment against them for the amount that may appear to be due; and the said court is hereby required to grant judgment, and award execution, for the amount certified by the auditor of public accounts, under the seal of his office, to be due from such defaulting assessor and collector; and no discounts shall be admitted by the court before whom the motion is made, except such as shall, in like manner, be certified, as having been allowed by the auditor of public accounts. And the clerk of the court shall endorse on every such execution, that "*no security of any kind is to be taken;*" and every sheriff or other officer to whom the same may be directed, shall govern himself accordingly.

Mode of proceeding against defaulting assesors and collectors.

Sec. 31. The lands belonging to the citizens of the United States, residing without this state, shall not be taxed higher than the lands belonging to persons residing within the same.

Tax on lands of citizens residing out of the state.

Assessor and collector to collect the tax of those returned as delinquents, if in his power.

SEC. 32. Where any assessor and collector of taxes has returned any delinquents, it shall be the duty of such assessor and collector, or his successor, (if in his power, afterwards) to collect the tax of such delinquents, and make return thereof at the time directed in this act; and to this end, it shall be the duty of the auditor of public accounts, and of the respective county treasurers, as the case may require, to transmit to the respective assessors and collectors, as soon as may be, after the first day of February, in each year, a list of such delinquents, and the sums by them respectively due and owing.

Assessor and collector may collect arrearages of taxes after the expiration of his time.

SEC. 33. The several assessors and collectors of taxes, heretofore appointed, and which may hereafter be appointed, shall be, and they are hereby authorised to finish the collection of all arrearages of taxes, which had become due during their continuance in office; notwithstanding the time may have expired for which such assessor and collector was appointed, or they may, at their discretion, deliver a list of such arrearages to their successors in office, to be by them collected, and accounted for, to their respective predecessors.

Or deliver a list thereof to his successor.

Mode of proceeding when the office of assessor and collector shall become vacant.

SEC. 34. If from any cause, the office of assessor and collector of taxes should become vacant in any county within this state, it shall be the duty of the presiding justice of the county court, without delay, to certify the same to the governor, who shall commission some other suitable person to finish the duties of the assessor and collector, whose office has become vacated; and the person so appointed, shall take the oath of office, enter into bond as herein before directed, shall perform the same duties, and be subject to the like penalties, as his predecessor would have been, had he continued in office.

CHAPTER 54.

An act, for the punishment of crimes and misdemeanors.

Passed June 14, 1822.

What cases shall be adjudged treason, how proved and punished.

SEC. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi, in general assembly convened,* That if any person or persons, owing allegiance to this state, shall levy war against it, or adhere to its enemies, giving them aid or comfort, within this state or elsewhere, or shall carry on treasonable or treacherous correspondence with them, or shall be any way concerned in forming any plot or combination, or conspiracy for betraying this state into the power of any foreign enemy, or shall give, or attempt to give any intelligence to such enemy for the purpose of betraying this state, or any of its forts, garrisons, warlike stores, troops or militia, into the power of any such enemy, every person so offending, and being thereof legally convicted, upon the testimony of two credible witnesses, testifying to the same overt act, of which such person shall stand indicted, or upon voluntary confession of such party, made in open court, shall be deemed guilty of treason, and shall suffer death.

Sec. 2. Every person who shall commit murder, or shall aid, abet, counsel, hire, command, cause or procure any person or persons to commit murder, shall on being thereof convicted, suffer death.

Murder punish with death.

Sec. 3. Every person liable to be prosecuted for petit treason, or as accessary thereto, shall in future be indicted, proceeded against and punished, as is directed in other kinds of murder.

Petit treason prosecuted and punished as other kinds of murder.

Sec. 4. If any person or persons shall commit the crime of manslaughter, and be thereof convicted, such person or persons shall be fined in such sum, and imprisoned, for such length of time, as shall be adjudged by the court, and branded in the hand with the letter M, in open court.

Manslaughter, how punished.

Sec. 5. If any person or persons, on purpose and of malice aforethought, shall unlawfully cut or bite off the ear or ears; or cut out, or disable the tongue; put out the eye, while fighting or otherwise; slit the nose or lip; cut or bite off the nose or lip; or cut off or disable any limb or member of any person whatever, he shall be deemed guilty of mayheim; and in every such case, the person or persons so offending, their counsellors aiders and abettors, shall on conviction thereof, pay a fine not exceeding one thousand dollars, at the discretion of the court; and shall stand in the pillory two hours every day, not exceeding three days.

Mayheim, what cases deemed, and how punished.

Sec. 6. Every person who shall assault another with intent to commit murder, rape or robbery, shall on conviction thereof, be fined at the discretion of the court, and be imprisoned a term not exceeding one year; and shall also give sufficient security for good behavior, for the term of six months, after the expiration of such imprisonment.

Assault with intent to commit murder, rape or robbery, how punished.

Sec. 7. If any person or persons shall hereafter be guilty of stealing, or selling any free person for a slave, knowing the said person stolen or sold, to be free, and shall be thereof lawfully convicted, the person or persons so convicted, shall suffer death.

Punishment for stealing or selling a free person.

Sec. 8. If any person or persons, shall steal any negro or mulatto slave, whatsoever, out of, or from the possession of the owner or overseer of such slave, the person or persons so offending, shall be, and they are hereby, declared to be felons, and shall suffer death.

For stealing a slave.

Sec. 9. Every person, who shall wilfully and maliciously burn any dwelling house, store, cotton house, gin, or out house, or building, adjoining such dwelling house or store, shall be

Arson, what deemed, and how punished.

deemed guilty of arson, and upon conviction thereof, shall suffer death.

Punishment for burning any out-house, barn, crib, stack &c.

SEC. 10. Every person who shall burn any out house, barn, or stable, not adjoining some dwelling house or store; or shall burn any hovel, crib, cock, mow, or stack of hay, fodder, corn, or grain; or shall be accessary to eitheir of the said offences, before the fact, shall, upon conviction thereof, pay the damages that any person may sustain thereby, and shall suffer imprisonment, not exceeding six months.

Rape punished with death.

SEC. 11. Every person who shall commit the crime of rape, and be thereof convicted, shall suffer death.

Polygamy, how punished.

SEC. 12. If any person being married, or who hereafter shall marry, shall marry any person, the former husband or wife being alive; then, the person so offending, shall be deemed guilty of a high misdemeanor, and, on conviction thereof, shall be punished by fine and imprisonment, for any term not exceeding two years, or either of them, at the discretion of the court, before whom such conviction shall be had; but neither this act, nor any thing herein contained, shall extend to any person whose husband or wife shall be continually remaining without the United States of America, for the space of five years together, or whose husband or wife shall absent himself or herself, the one from the other, for the space of five years together, in any parts within this state or the United States, the one of them not knowing the other to be living within that time; nor to any person who is, or shall be, at the time of such marriage, divorced by the sentence or decree of any authority, or court, having cognizance thereof; nor to any person where the former marriage hath been, or shall be, by the sentence or decree of any such authority, or court, declared to be void, and of no effect; nor to any person, for, or by reason of any former marriage, had or made, or to be had or made, within the age of consent.

To what cases this act does not extend.

Incest, what, and how punished.

SEC. 13. All persons who shall intermarry within the degrees prohibited by law, shall be adjudged to be guilty of incest and a misdemeanor, and on conviction thereof, shall be punished by fine not exceeding five hundred dollars, and by imprisonment not exceeding eighteen calendar months, or both, at the discretion of the court.

Robbery punished with death.

SEC. 14. Every person who shall commit the crime of robbery, and be thereof convicted, shall suffer death.

Burglary punished with death.

SEC. 15. Every person who shall commit the crime of burglary, and be thereof convicted, shall suffer death.

Accessaries after the fact, to murder, rape, arson, robbery,

SEC. 16. If any person or persons, shall be accessary, after the fact, to any wilful murder, rape, arson, robbery, or burglary, he, she, or they, so offending, shall, upon conviction thereof, be fined not exceeding five hundred dollars, at the discretion of the court, and shall receive thirty-nine lashes on the bare back.

or burglary, how punished.

Accessaries before the fact.

Sec. 17. If any person or persons shall be accessary before the fact, to any rape, arson, robbery, or burglary, he, she, or they, so offending, shall on conviction thereof, suffer death.

Larceny, to the value of twenty dollars, how punished.

Sec. 18. Any person convicted of larceny, to the value of twenty dollars, or upwards, or as accessary thereto, shall restore the goods or chattels so stolen, to the rightful owner or owners; or shall pay to him, her, or them, the value of such goods or chattels, as shall not be restored; and moreover, shall receive thirty-nine lashes upon his or her bare back; and shall stand in the pillory, at the discretion of the court, so as not to exceed two hours in each day, for three days.

Petit larceny, what, and how punished.

Sec. 19. If any person or persons shall feloniously take, steal, and carry away any goods or chattels under the value of twenty dollars, or shall be accessary thereto, before the fact, he, she, or they, being thereof legally convicted, shall be deemed guilty of petit larceny, and shall restore the goods and chattels so stolen, to the owner or owners thereof, or pay the value thereof to such owner or owners; and shall receive any number of lashes, not exceeding thirty-nine.

Robbery, or larceny of bonds, bills, notes, &c. how punished.

Sec. 20. Robbery, or simple larceny of obligations or bonds, bills obligatory, or bills of exchange; promissory notes for the payment of money, or notes for the payment of any specific property, lottery tickets, paper bills of credit, cotton receipts, certificates granted by, or under the authority of this state, or of the United States, or of any of them, shall be punished in the same manner, both as to the principal and accessary, as robbery, or simple larceny of goods and chattels.

Receivers or buyers of stolen goods, or harborers of felons, how punished.

Sec 21. If any person or persons, shall receive or buy any goods or chattels, that shall be feloniously taken or stolen from any other person, knowing the same to have been so taken or stolen; or shall receive, harbor, or conceal any felons or thieves, knowing them to be so, he, she, or they, being of either of the said offences legally convicted, shall restore the goods so received, or pay double the value thereof, and shall stand in the pillory two hours.

Horse stealing, how punished.

Sec. 22. If any person do feloniously take or steal, any horse, mare, or gelding, foal or filly, ass or mule, the person so offending, shall restore the property so stolen, or pay the value thereof, which shall be adjudged by the jury trying such offender, to the owner or owners thereof, and be fined at the discretion of the court, in a sum not exceeding five hundred dollars, and shall moreover, receive thirty-nine lashes, on his or her bare back, well laid on, and be branded on the face, or in the right hand, as the court may think fit, with the letter T, and be imprisoned

Second offence, punished with death.

for a term not exceeding twelve months, and shall stand in the pillory not exceeding two hours each day, for three days, and for the second offence of horse stealing, on conviction thereof, shall suffer death.

Receivers or buyers of stolen horses, or harborers of thieves, deemed accessaries.

How punished.

SEC. 23 If any person or persons shall receive, or buy any horse, mare, or gelding, foal or filly, ass or mule that shall have been feloniously taken or stolen from any other person, knowing the same to have been stolen, or shall harbor or conceal any horse or mule stealer, knowing him to have so offended; such person shall be deemed and taken as an accessary to such felony, and being of either of the said offences legally convicted, by the testimony of one or more credible witness or witnesses, shall incur and suffer the punishment of fine, imprisonment, whipping, branding and pillory, as prescribed in the preceding section.

When such accessaries may be punished before the principal is convicted.

SEC. 24. If any such principal felon cannot be taken, so as to be prosecuted and convicted of any such offence, it shall and may be lawful to prosecute every such person or persons, buying and receiving any such animal, as aforesaid, stolen by any such principal felon, knowing the same to have been stolen; and on conviction thereof, such offender shall be punished in the same manner, as if the said principal felon had been previously tried and convicted.

Receivers of stolen goods may be prosecuted as for a misdemeanor before conviction of the principal felon.

Effect of such prosecution.

SEC. 25. And whereas, it sometimes happens that the buyers and receivers of stolen goods, convey away and conceal the principal felons, so that they cannot be convicted of such felony, and thereby such buyers and receivers escape all manner of punishment: *Be it therefore enacted*, That it shall and may be lawful to prosecute and punish every such person and persons, buying or receiving any stolen goods, knowing the same to be stolen, as for a misdemeanor, although the principal offender cannot be taken, or be not convicted of the said felony, which shall exempt the offender from being punished, as accessary, if the principal shall be afterwards convicted.

Punishment for stealing cattle, hogs, sheep or goats.

SEC. 26. Every person who shall be convicted of stealing any neat cattle, hog, sheep, or goat, shall for every such animal so stolen, pay to the owner or owners the value thereof, and moreover, shall receive on his or her bare back, thirty-nine lashes, well laid on.

In what county persons shall be prosecuted who shall steal property out of the state, and afterwards have the same in possession within the state.

SEC. 27. Any person or persons, who shall steal, or otherwise feloniously take any horse, or other goods and chattels, from any person in any place out of this state, and shall afterwards have the same, or any part of such goods and chattels, in his, her, or their possession, within this state, may be indicted for horse stealing or other larceny, in whatever county, he, she, or they may be found, with such horse, or other goods and chattels, as aforesaid; and any receiver of stolen property, knowing the same to have been stolen, may be indicted in any county, in which he shall have such stolen property in his possession, although the same may have been originally taken beyond the limits of this state.

Sec. 28. It shall be lawful for any justice of the peace, upon complaint made before him upon oath, that there is reason to suspect that stolen goods are knowingly concealed in any dwelling house, out house, garden, yard, or other place or places, to issue a warrant under his hand and seal, commanding every such dwelling house, or place to be searched in the day time, and the person or persons knowingly concealing such stolen goods, or any part thereof, or in whose custody the same, or any part thereof shall be found, such person or persons being privy thereto, shall be deemed guilty of a misdemeanor, and shall be brought before any justice of the peace for the county or place, and made amenable to answer for the same, by like warrant of any such justice, and on conviction, shall be punished by fine and imprisonment, or stripes, as the court shall think fit to inflict, although the principal felon be not before convicted of the said felony, and whether such felon be amenable to justice or not.

Justice of the peace may issue his warrant to search for stolen goods.

Person concealing such goods may be punished for a misdemeanor before the principal is convicted.

Sec. 29. Upon all indictments of, or for the death of any person or persons, if it be found by the verdict of a jury, that the party indicted, killed the person or persons for whose death he, she, or they, is, are or shall be indicted, in his, her, or their own defence, or by misfortune, then, and in every such case, the party so found by verdict to have killed the person or persons for whose death he, she, or they, is, are, or shall be indicted, in his, her, or their own defence, or by misfortune as aforesaid, shall be thereof, and for the same fully acquitted and discharged.

Any person found by the verdict of a jury to have killed another by misfortune, or in self-defence, to be acquitted.

Sec. 30. Upon all indictments of, or for the death of any person or persons, if it be found by verdict, that the party indicted, happened to kill the person or persons, for whose death he, she, or they, is, are, or shall be indicted, in attempting or endeavoring by any lawful ways or means, to apprehend, take, or arrest the same person or persons, for any treason or felony done and committed, or hereafter to be done and committed, or in the lawful defence of his, her, or their husband, wife, parent, child, master, mistress or servant, or in suppressing any riot, or in keeping and preserving the peace, or in lawfully chastising or correcting his, her, or their child or servant, then, and in every such case, the party, so found by verdict, to have killed the person or persons, for whose death, he, she, or they, is, are, or shall be indicted, shall be thereof, and for the same, fully acquitted and discharged.

Persons also to be acquittted who are found to have killed another in attempting to arrest for felony, in defence of husband, wife, parent, child, &c. in preserving the peace, or in correcting child or servant.

Sec. 31. When any person or persons, accused of treason, felony, or other crime or misdemeanor, shall be committed to the jail of any county in this state, and the sheriff shall have

Guard for securing prisoners in jail may be summoned by warrant from a justice of the peace.

cause to suspect such person or persons will attempt to escape, such sheriff is hereby empowered and required to apply to any justice of the peace, of the county where such person or persons may be confined, who shall on such application, issue his warrant, directed to the said sheriff, for a sufficient guard for securing such prisoner or prisoners, so long as he, she, or they, continue in said jail; to be paid by such county out of the county treasury, after the rate of fifty cents for each man per day.

Expense, how defrayed.

punishment for selling unwholesome meat, bread or drink.

SEC. 32. Any butcher or other person, who shall sell the flesh of any animal dying otherwise than by slaughter, or slaughtered when diseased; or any baker, brewer, distiller or other person, who shall sell unwholesome bread or drink; shall, on conviction by the verdict of a jury, for the first offence, be fined in such sum as shall be adjudged by the court, before whom such offender is tried; and for the second offence, shall, in addition to such fine, stand in the pillory for three days in succession, one hour each day.

Altering or defacing brands or marks, how punished.

SEC. 33. Every person who shall be convicted of altering or defacing the mark or brand of any horse, mare, colt or mule, ass, neat cattle, hog, sheep or goat, not being his own property, and without the consent of the owner, shall for every such animal, whose brand or mark shall have been so altered or defaced, forfeit and pay a fine not exceeding twenty dollars, for every animal, the brand or mark whereof has been so altered or defaced, and receive any number of lashes not exceeding thirty, or stand in the pillory not exceeding two hours.

Persons how punished for marking unmarked stock, without the consent of the owner.

SEC. 34. If any person shall be convicted of having marked or branded with his mark or brand, or with any other mark or brand, any unmarked or unbranded horse, mare or gelding, colt, mule, ass, cattle, hogs, sheep or goat, not being his own property, and without consent of the owner, the person so offending shall forfeit and pay a fine not less than double the value of every animal so branded and marked: *Provided, nevertheless,* That if any person being in doubt as to the right of property, shall call in two of the neighbors next adjoining the range, where such stock shall run; and in their presence, and with their approbation, mark and brand, or either, any such stock, as aforesaid, he shall not be liable to the penalty contained in this section.

Proviso.

Punishment for forgery of the current coin.

SEC. 35. If any person or persons shall forge or counterfeit, or cause or procure to be forged or counterfeited, or shall wilfully act, or assist in the forging or counterfeiting any gold or silver coin, which now is, or hereafter may be, passing, or in circulation in this state; or shall falsely utter, pay or offer, or tender in payment, any such forged or counterfeited coin, knowing the same to be forged or counterfeited, every person so offending, and being thereof convicted, shall suffer death.

Or uttering forged coin, knowing the same to be forged.

For forging or counterfeiting any grant, bill, order, acceptance, bank note &c. with intention to defraud.

SEC. 36. If any person or persons shall falsely make, alter, forge or counterfeit, or cause or procure to be falsely made, altered, forged or counterfeited; or wilfully aid or assist, in the false making, altering, forging or counterfeiting, any letters patent, gift, grant, bond writing obligatory, bill or order, or acceptance of such bill or order, note of the bank of the United States, or of the bank of any one of the said states, or bank of any territory of the United States, cotton receipt, promissory note, or receipt for money paid, will, indenture, deed or contract, with intention to defraud any person, or shall utter, put off, or offer, or cause to be uttered, put off, or offered in payment or for sale, any such false, forged, altered, or counterfeited bond, bill, order, or acceptance of such bill or order, note of the bank of the United States, or of the bank of any one of the said states, or bank of any territory of the United States, cotton receipt, promissory note, will, indenture, deed or contract, with intention to defraud any person, knowing the same to be false, altered, forged, or counterfeited, and shall be thereof convicted, every such person shall suffer death.

For stealing or avoiding records whereby any judgment is reversed.

Or acknowledging any recognizance, bail, or judgment, in the nameof another not privy thereto.

SEC. 37. If any person or persons, shall feloniously steal, take away, alter, falsify, or otherwise avoid any record, writ, process or other proceedings, in any of the courts of this state, by means whereof, any judgment shall be reversed, made void, or not take effect; or if any person shall acknowledge, or procure to be acknowledged, in any of the courts aforesaid, any recognizance, bail or judgment, in the name or names of any other person or persons, not privy or consenting to the same, every such person or persons, on conviction thereof, shall pay a fine not exceeding five hundred dollars, at the discretion of the court, and may also, at the discretion of the court, receive not exceeding thirty-nine lashes: *Provided nevertheless*, That this act shall not extend to the acknowledgment of any judgment or judgments, by any attorney or attorneys, duly admitted, for any person or persons against whom any such judgment or judgments, shall be had or given.

For defacing altering, or embezzling any record, etc.

SEC. 38. Every person who shall deface, alter, falsify, or embezzle, any record, enrolment, or matter, or instrument recorded, or registry thereof, with intent to defraud, shall, upon conviction thereof, pay a fine, not exceeding one thousand dollars, at the discretion of the court, and be imprisoned a term not exceeding one year.

For perjury and subornation of perjury.

SEC. 39. If any person or persons shall wilfully and corruptly commit perjury, or shall by any means procure any person to commit corrupt and wilful perjury, on his, or her oath, or affirmation, in any suit, controversy, matter or cause depending in any of the courts of this state, or in any deposition or affidavit, taken or made pursuant to the laws of this state, every person so offending, and being thereof convicted, shall pay a fine not exceeding three hundred dollars, at the discretion of the court, and stand in the pillory two hours, and may have not exceeding thirty-nine lashes on the bare back; and shall be thereafter rendered incapable of giving testimony in any of the courts of this state, until such time as the judgment against such offender be reversed.

What shall be set forth in prosecutions for perjury.

Sec. 40. In all prosecutions against any person, for wilful and corrupt perjury, it shall be sufficient to set forth the substance of the offence charged upon the defendant, and before what court, or before whom the oath or affirmation was taken; avering such court, person or persons, to have competent authority to administer the same; together with a proper averment or averments, to falsify the matter or matters, wherein the perjury or perjuries, is, or are assigned, without setting forth the bill, answer, information, indictment, declarations, or any part of any record or proceeding, either in law or equity, other than as aforesaid; and without setting forth the commission or authority of the court, or the commission or authority of the person or persons, before whom the perjury was committed.

What shall be set forth in prosecutions for subornation of perjury.

Sec. 41. In all prosecutions for subornation of perjury or for corrupt bargaining or contracting with others to commit wilful and corrupt perjury, it shall be sufficient to set forth the substance of the offence charged upon the defendant, without setting forth the bill, answer, information, indictment or declaration, or any part of the record or proceeding, either in law or equity, and without setting forth the commission or authority of the court, or person or persons before whom the perjury was committed, or was agreed or promised to be committed.

Misprision of felony, what adjudged and how punished.

Sec. 42. If any person having knowledge of the actual commission of the crimes of wilful murder, rape, arson, robbery, burglary, or larceny, shall conceal, and not as soon as may be, disclose and make known the same to some of the judges, or other person or persons in civil authority within this state, such person or persons, on conviction thereof, shall be adjudged guilty of misprision of felony, and shall pay a fine not exceeding three hundred dollars, and may also, at the discretion of the court, receive any number of lashes not exceeding thirty-nine.

Punishment for obstructing the execution of process.

Sec. 43. If any person or persons shall knowingly or wilfully obstruct, resist or oppose any officer of this state, in serving, or attempting to serve, or execute any mesne process, or warrant or any rule or order of any of the courts of this state, or any other legal or judicial writ, or process whatsoever; or shall assault, beat, or wound any officer, or other persons duly authorised, in serving or executing any writ, rule, order, process or warrant aforesaid, every person so knowingly and wilfully offending in the premises, shall, on conviction thereof, be imprisoned not exceeding four months, and fined not exceeding one thousand dollars, at the discretion of the court trying such offender.

For setting at liberty or rescuing a person convicted of a capital crime.

Sec. 44. If any person or persons shall, by force, set at liberty, or rescue any person or persons, who shall be found guilty of any capital offence, or rescue any person convicted of any capital crime, going to execution or during execution, every person so offending, and being thereof convicted, shall suffer death. And if any person or persons shall by force, set at liberty or, rescue any person or persons, who, before conviction shall stand committed for any capital offence, or if any person or persons shall by force set at liberty, or rescue any person or persons committed for any other offence, every person so offending, shall, on conviction thereof, be fined not exceeding three hundred dollars, at the discretion of the court, and be imprisoned not exceeding nine months.

For setting at liberty or rescuing before conviction a person committed for any offence.

For conveying to prisoners instruments by means of which they may break the prison and escape.

Sec. 45. If any person or persons shall, directly or indirectly, by any ways or means howsoever, without the knowledge or privity of the keeper convey any instrument, tool or other thing whatsoever, to any prisoner or into any prison, whereby any prisoner might break the prison, or work himself or herself unlawfully out of the same; every person so offending, shall forfeit and pay such fine, as by the discretion of the court shall be imposed, not exceeding five hundred dollars, according to the nature of the cause of the prisoner's commitment, and suffer such corporeal punishment, not exceeding thirty-nine stripes, as the court shall inflict; and if it should so happen, that any prisoner shall make his or her escape, by means of any instrument or tool, or other thing conveyed without the knowledge and privity of the keeper, the person so conveying the same, shall be liable to pay all such sums of money for which the prisoner stood committed, if on civil process, and shall also have inflicted upon him or her all such punishments, to which the escaped prisoner would be liable, if a criminal, and had been convicted of the charge for which he or she had been committed, unless such prisoner would be liable to capital punishmnnt; in which case, the person assisting in such escape, shall be punished by fine, imprisonment, whipping, pillory, or sitting on the gallows, with a rope about his or her neck; or any one or more of the said punishments, as the court having cognizance thereof, shall think proper to inflict.

Jailors or prison keepers how punished for voluntarily suffering prisoners to escape.

Sec. 46. If any jailor or prison keeper shall voluntarily suffer any prisoner committed unto him, to escape, he shall suffer and undergo the like pains, punishments, and penalties, as the prisoner so escaping, should or ought by law, to have suffered and undergone, for the crime or crimes wherewith he stood charged, if he had been convicted thereof. And if any jailor or prison keeper shall, through negligence, suffer any prisoner accused of any crime, to escape, he shall pay such fine, as the court, before whom he is convicted shall, in their discretion inflict, according to the nature of the offence, for which the escaped prisoner stood committed, *Provided, nevertheless*, That if any person, who may be committed for debt, shall violently escape from prison, with-

For suffering them to escape through negligence.

Provision as to the violent es

cape of persons committed for debt.

out the connivance of the sheriff or keeper, and the sheriff, jailor or prison keeper, shall, within three months next after such escape, recover the prisoner so escaped, and re-commit him to prison, then the sheriff shall be liable to nothing further than the cost of such action or actions as may have been commenced against him for such escape.

Fines and forfeitures how collected and where paid.

Sec. 47. All fines and forfeitures which shall be incurred under this act, shall be collected by the sheriff of the particular county where such offender or offenders reside, and paid by him into the state treasury.

Offences not provided for by statute, to be punished by common law.

Sec. 48. Every felony, misdemeanor, or offence whatsoever, not provided for by this, or some other act of the general assembly, shall be punished as heretofore, by the common law.

In capital cases a copy of the indictment and list of the jury to be delivered to the accused two entire days before trial.

Every person accused and indicted, to be allowed counsel.

Also, process to compel his witnesses to appear on his trial.

Sec. 49. Any person who shall be indicted for any capital crime, shall have a copy of the indictment, and a list of the jury who are to pass on his or her trial delivered unto him or her, at least two entire days before he or she shall be tried for the same; and every person accused and indicted, shall be allowed and admitted to make his full defence, by counsel learned in the law; and the court before whom such person shall be tried, or some judge thereof, shall immediately upon his or her request, assign to such person, such counsel, not exceeding two, as such person shall desire; to whom such counsel shall have free access at all seasonable hours; and every such person or persons, so accused and indicted, shall be admitted in his, her, or their defence, to make any proof, he, she or they, can produce, by lawful witness, or witnesses; and shall have the like process to compel his, her, or their witnesses, to appear, on his, her, or their trial, as is usually granted to compel witnesses to appear on the prosecution against him, her, or them.

Peremptory challenge in capital cases allowed to the number of twenty.

To the number of four in cases not capital.

Sec. 50. No person indicted for a capital offence, shall be allowed to challenge peremptorily, above the number of twenty persons of the jury; and, if any person shall desire to challenge above the number aforesaid, the same shall be allowed for lawful cause shown only; and each and every defendant in criminal cases, not capital, who shall be tried in any of the superior courts of this state, shall be allowed a peremptory challenge to the number of four of the jurors called to be sworn to try the issue or issues, between such defendant or defendants, and the state.

When persons on their arraignment stand mute, the plea of "not guilty," shall be entered.

Sec. 51. If any person on his or her arraignment for any capital or inferior offence, shall stand mute, or will not answer to the indictment, the plea of "not guilty," shall be entered for him or her, on the record; and the court shall in either of the said cases, proceed to trial of the person standing mute, as if he or she had pleaded "not guilty," and for trial put him or herself upon the country, and render judgment accordingly.

SEC. 52. No person or persons shall be prosecuted, tried or punished, for any offence, wilful murder, arson, forgery, counterfeiting, and larceny excepted, unless the indictment, presentment or information for the same, be found or exhibited within one year next after the offence shall be done or committed; nor shall any person be prosecuted for any fine or forfeiture under a penal statute, unless the prosecution for the same shall be instituted within twelve months from the time of incurring the fine or forfeiture aforesaid: *Provided*, That nothing herein contained, shall extend to any person or persons, absconding or fleeing from justice.

Limitation of prosecutions.

SEC. 53. The manner of inflicting the punishment of death, shall be by hanging the person convicted, by the neck until dead.

Manner of inflicting punishment of death.

SEC. 54. All fines and penalties, in prosecutions for criminal offences, or for the violation of any penal statute, shall be assessed by the court before whom the offender may be tried, on the return of a verdict of guilty, by the jury empanneled in such prosecution.

Fines and penalties assessed by the court.

SEC. 55. The lands, tenements, goods and chattels, of any person or persons, convicted of any crime or misdemeanor, shall be liable and subject, in preference to all other demands whatever, (except dower and jointure,) in the first place, to the discharge of the expenses incurred by the state or county, in the prosecution and conviction of such offender; and in the next place, to what restitution or reparation, may be adjudged to the injured party; and if the estate of the person or persons shall be insufficient for the said purposes; then, in that case, after deducting the expenses of prosecution and conviction as aforesaid, the surplus (if any,) shall go towards making reparation to the party injured.

Property of persons convicted subject, in preference to other demands first, to the expenses of prosecution, nextly, to restitution or reparation to the party injured.

SEC. 56. For all fines assessed, and costs of prosecution in criminal cases, not capital, the person or persons convicted may stand committed to prison, by order of court, and may be taken and committed on execution *pro* fine, till such fine and costs be paid; and when it shall be made to appear to the court, that the person so committed, hath no estate or means wherewith to pay such fine and costs, it shall be the duty of the court to discharge such person from further imprisonment for such fine and costs.

Persons convicted may stand committed till fine and costs are paid.

Or having no means to pay the same shall be discharged.

SEC. 57. All recognizances taken for any breach of the peace, for the prosecution of offenders against the laws, or in any case whatsoever, where a recognizance may be necessary, shall be made payable to the state of Mississippi.

Recognizances to be made payable to the state.

SEC. 58. If any man and woman shall live together in adultery or fornication, it shall be the duty of any judge or justice of the peace, of the state, if within their own knowledge, or upon information to them made on oath, that such man and woman do

Mode of proceeding against persons living together in adultry or fornication.

live in adultery or fornication, to cause such man and woman, or either of them, to be brought before him, and he shall bind them or either of them, over, to appear at the next term of the circuit court of the county, where the offence was committed; and it shall be the duty of the attorney general of the state, or any district attorney, to prefer a bill of indictment against such person or persons, and upon conviction thereof, the person or persons so offending, shall be fined in a sum, not less than one hundred dollars, nor more than five hundred dollars, at the discretion of the court.

Fine.

Bearing false witness wilfully and by means of which life is taken away, punished with death.

SEC. 59. If any person shall bear false witness wilfully, and of purpose to take away any person's life, and the life of any person be taken away in consequence of such false witness; the person so offending, on conviction thereof, before any court of competent jurisdiction, shall suffer death. But if no person's life shall be taken in consequence of such false witness, the offender, on conviction as aforesaid, shall be punished as in this act is provided for the punishment of perjury.

Truth may be given in evidence in prosecutions for libels.

SEC. 60. In every prosecution for writing or publishing any libel, it shall be lawful for the defendant, upon the trial, to give in evidence, in his defence, the truth of the matter contained in the publication charged as libellous.

Punishment for writing or publishing a libel.

SEC. 61. Any person or persons convicted of writing or publishing a libel, shall be fined in such sum, and imprisoned for such term, as shall be adjudged by the court, before whom such conviction shall be had, having regard to the nature and enormity of the offence.

Sen de to be ced for rime, unless the punishment is declared death by this act

Benefit of clergy abolished.

SEC. 62. Sentence of death shall in no case be pronoun against any person or persons convicted of either of the crim hereinbefore mentioned, unless the punishment prescribed f the commission of such crimes is declared to be death by thi act; and all laws, customs or usages, relating to, or in any manner respecting the benefit of clergy, are hereby abrogated and made null to all intents and purposes.

Persons convicted of high offences disqualified from office.

SEC. 63. No person shall be appointed to, or exercise the powers, or perform the duties, of any office of profit or honor, in this state, who shall hereafter be convicted of bribery, perjury, forgery, or other high crimes or misdemeanors.

Punishment for altering or removing land-marks.

SEC. 64. For the greater security and certainty of the boundaries of land: *Be it further enacted*, That if any person or persons in this state, shall cut, fell, alter or remove, or shall cause to be cut, felled, altered or removed, any certain boundary tree, or other allowed land mark, to the wrong of his neighbor or any other person; such offender or offenders being thereof convicted, shall be fined in a sum, not exceeding two hundred dollars, nor less than fifty dollars.

Persons accused of a criminal offence not to be discharged for defects in the commitment, indictment or information.

Sec. 65. No person accused of any criminal offence, shall be set at liberty before his trial, on account of any irregularity or informality in the warrant of commitment; nor after conviction, on account of any legal error or imperfection in the indictment or information, but the same proceedings shall be had again as though such person had never been arraigned; nor shall the words "force and arms," or the words "contrary to the form of the statute," be deemed necessary in any indictment or information, for treason, felony, or any other criminal offence; nor shall the party indicted, have any advantage by writ of error, or plea, or otherwise, for the want of these or the like words, but such indictment or information shall be judged as effectual to all intents and purposes, as if the same words were therein contained.

Words "force and arms" or "contrary to the form of the statute," not necessary.

Reward for apprehending and prosecuting to conviction, a person guilty of a capital offence.

Sec. 66. Whosoever shall apprehend and take one or more persons, guilty of any offence, punishable with death, by this act, and shall prosecute him, her, or them, to conviction, shall, for every such offender so convicted, receive after such conviction, a warrant on the treasury of the state for the sum of one hundred dollars, on producing a certificate to the auditor of public accounts, from the court before whom such felon or felons shall be convicted; and in case any dispute shall arise between persons so apprehending any such offender, touching their right to the said reward, then such court shall, by their certificate, direct the said reward to be paid in such shares and proportions as to them shall seem just and reasonable. The person or persons so apprehending any offender, shall be competent to give testimony on the trial of such offender.

Person so apprehending an offender, a competent witness on the trial.

When the court may order the prosecutor to pay costs.

Sec. 67. If the state fail in the prosecution of any inferior offence, the court may, at their discretion, and on motion of the attorney-general or district attorney, if the prosecution appear to be frivolous or malicious, order the prosecutor to pay costs.

On second conviction, punishment to be double the fine and imprisonment imposed on the first.

Sec. 68. Where any person or persons shall be convicted of an offence, the punishment of which is (in whole or in part) fine and imprisonment by this act, and shall be prosecuted and convicted a second time, or oftener, for a like offence, such person or persons shall be sentenced to pay at least double the fine, and be imprisoned at least double the term, which may have been adjudged against such offender or offenders, on the first conviction; and if any person or persons shall be convicted a second time of the crime of manslaughter, the person or persons so offending, shall suffer death.

Manslaughter, on the second conviction punished with death.

Name of prosecutor to be marked on bills of indictment.

Sec. 69. It shall hereafter be the duty of the attorney-general, and district attorneys of the state, to mark on all bills of indictment, the name of the prosecutor or prosecutors.

Sheriff or jailor to certify the names of pris-

Sec. 70. It shall be the duty of every sheriff and other person having authority or power of keeping a jail, or of prisoners for oners committed at the next court.

felony, to certify the names of all such prisoners in his keeping, and of every prisoner to him committed for any criminal offence, at the next court, having cognizance thereof.

In what case certain prosecutions may be discontinued.

SEC. 71. In all cases where a person shall, on the complaint of another, be bound by recognizance to appear, or shall for want of surety, be committed, or shall be indicted for an assault and battery, or other misdemeanor, to the injury and damage of the party complaining, and not charged to have been done riotously or with intent to commit a felony, or not being an infamous crime, and for which there shall also be a remedy by civil action, if the party complaining shall appear before the judge or justice, who may have taken the recognizance, or made the commitment, or before the court in which the indictment may be, and acknowledge to have received satisfaction for such injury and damage, it shall be lawful for the judge or justice, in his discretion, to discharge the recognizance, or supersede the commitment, and also to discharge the recognizance which may have been taken for the appearance of witnesses in such case, or for the court also in their discretion to order a *noli prosequi* to be entered on the indictment, as the case may require, upon payment of costs: *Provided always*, That this act shall not extend to any assault and battery, or other misdemeanor, committed by, or on any officer or minister of justice.

How criminals fleeing from another state or territory of the United States, may be demanded and surrendered.

SEC. 72. When the executive authority of any of the United States or territories thereof, shall demand any person as a fugitive from justice, of the executive authority of this state, and shall moreover produce the copy of an indictment found, or an affidavit charging the person so demanded with having committed treason, felony or other crime, (such copy of the indictment, or such affidavit being certified as authentic by the governor or chief magistrate of the state or territory from which the person so charged fled,) it shall be the duty of the executive authority of this state, to cause such person to be arrested and secured, and notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive; and to cause such fugitive to be delivered to such agent, if he shall appear within six months from the time of such arrest, and pay all costs and expenses, incurred in apprehending and securing the fugitive; otherwise, the said fugitive may be discharged.

The executive of this state may demand fugitives from justice of the executive of any other state or territory of the United States.

SEC. 73. The executive authority of this state, shall have power and authority to demand and receive any person as a fugitive from justice, of the executive authority of any of the United States, or the territories thereof, to which such person shall have fled, in the same manner, and under the same rules, and regulations, as prescribed by the foregoing section.

Fine for pulling down advertise-

SEC. 74. If any person shall wilfully pull down any advertisement, which is required by law to be set up by any person or persons, he or she so offending, shall forfeit and pay for the first offence, five dollars, and for every like offence thereafter, ten dollars, to be recovered before any justice of the peace, by any person suing for the same; which fine, when collected, shall be paid into the county treasury, for county purposes.

ments which are required by law to be set up.

Sec. 75. All persons shall be bailable, unless for capital offences where the proof shall be evident, or the presumption great, by any justice of the peace, before whom the offender may be brought, before commitment, or by any one of the judges of the supreme court, or courts of chancery, thereafter.

What offences shall be bailable and by whom.

CHAPTER 55.

An act, to suppress duelling.

Passed June 13, 1822.

Whereas, experience has evinced that the existing remedy for the suppression of the barbarous custom of duelling, is inadequate to the purpose; and the progress and consequences of the evil have become so destructive as to require an effort on the part of the legislature, to arrest a vice, the result of ignorance and barbarism, justified neither by the precepts of morality, nor by the dictates of reason; for remedy whereof,

Preamble.

Sec. 1 *Be it enacted by the senate and house of representatives of the state of Mississippi in general assembly convened*, That any person who shall hereafter wilfully and maliciously, or by previous agreement, fight a duel or single combat, with any engine, instrument or weapon, the probable consequence of which might be the death of either party, and in so doing, shall kill his antagonist, or any other person or persons, or inflict such wound as that the person injured shall die thereof within three months thereafter, such offender, his aiders, abettors and counsellors, being thereof duly convicted, shall be guilty of murder, and suffer death, any law, custom or usage of this state, to the contrary notwithstanding.

Person killing another in a duel guilty of murder.

Sec. 2. If any person whatsoever shall challenge another to fight a duel with any weapon, or in any manner whatsoever, the probable issue of which may or might result in the death of the challenger or challenged; or if any person shall accept a challenge, or fight a duel, with any weapon, or in any way whatsoever, the probable issue of which may or might terminate in the death of the challenger or challenged; such person shall be incapable of holding or being elected to any post of profit, trust or emolument, civil or military under the government of this state.

Person challenging or accepting a challenge, incapacitated for office.

Sec. 3. From and after the passage of this act, every person who shall be appointed to any office or place, civil or military, under this state, shall, in addition to the oath now prescribed by

Oath to be taken by persons appointed to any office.

aw, take the following oath: "I do solemnly swear, or affirm (as the case may be,) that I have not been engaged in a duel, by sending or accepting a challenge to fight a duel, or by fighting a duel, or in any other manner, in violation of the act, entitled "An act, to suppress duelling," since the passage of that act, nor will I be so concerned, directly or indirectly, in such duel, during my continuance in office: So help me God."

All laws to suppress duelling to be given in charge to grand juries.

SEC. 4. It shall be the duty of the presiding judge of the circuit courts, at each session of the courts, to give in charge expressly to the grand jury, all the laws in force to suppress duelling; also to charge the jury to present all persons concerned in carrying, sending or accepting a challenge; and if any person shall be presented in such courts, the said courts shall, if they have jurisdiction of said offences, proceed to trial of the same, in the ordinary way, and if not, the presentment shall be certified by order of the court, to such court as has jurisdiction, or shall be considered in law, a sufficient authority for a magistrate to issue his warrant against the accused.

Duty of judges and magistrates who suspect a duel is about to take place.

SEC. 5. When any judge or magistrate of this state has good cause to suspect any person or persons are about to be engaged in a duel, he may issue his warrant to bring the parties before him; and if he shall think proper to take of them a recognizance to keep the peace, he shall insert in the condition, that the party or parties shall not, during the time for which they were bound, directly or indirectly, be concerned in a duel, either with the person suspected, or any other person, within the time limited by the recognizance.

Proceedings to be had where persons leave the state.

SEC. 6. If any person or persons shall, for the purpose of eluding the operation of the provisions of this act, leave the state, the person or persons so offending shall be deemed as guilty, and be subject to the like penalties as if the offence had been committed within this state. And if any person shall leave this state with the intention of giving or receiving a challenge to fight a duel, or of aiding or abetting in giving or receiving such challenge, and a duel shall actually be fought, whereby the death of any person shall happen, and the person so leaving the state shall remain thereout, so as to prevent his apprehension for the purpose of a trial, or if any person shall fight a duel in this state, or aid or abet therein, whereby any person shall be killed, and then flee into another state, to avoid his trial, in either case, it shall be the duty of the executve to adopt and pursue all legal steps to cause any such offender to be apprehended and brought to trial in the county where the offence was committed, when the duel shall have been fought within the state, and when it shall have been fought without the state, then, in that county where, in the opinion of the executive, the evidence against the offender can be best obtained and produced upon his trial.

SEC. 7. If any person not being a citizen of this state, shall be guilty of the offence of sending a challenge to fight a duel, or shall accept such challenge, or shall be the bearer of a challenge to fight a duel, knowing the intent and meaning thereof to be such, the person or persons so offending, shall, on conviction thereof, be fined in the sum of one thousand dollars, and imprisoned for the term of twelve months.

Person not a citizen of the state fighting a duel or sending, bearing, or accepting a challenge how punished.

SEC. 8. It shall be the duty of the attorney general, and the several district attorneys in this state, to give information to the executive, whenever a case shall arise, in their districts, respectively, which will render the interposition of the executive authority, under this act, necessary; and the said attorneys, either at the first session of the circuit court within their respective districts, after the passage of this act, or at the time of their acceptance of their offices, where they shall hereafter be appointed, shall take the following oath: "I do solemnly swear or affirm, (as the case may be,) that I will to the best of my judgment, execute the duty imposed on me by the act to suppress duelling: So help me God."

Duty of attorney general and district attorneys.

SEC. 9. All words, which from their usual construction and common acceptation, are considered as insults, and lead to violence and breach of the peace, shall hereafter be actionable, and no plea, exception or demurrer, shall be sustained in any court within this state, to preclude a jury from passing thereon, who are hereby declared to be the sole judges of the damages sustained; *Provided*, That nothing herein contained shall be construed to deprive the several courts of this state, from granting new trials as in other cases.

Certain words made actionable.

CHAPTER 56.

An act, concerning the crimes of poisoning and stabbing, and prescribing the punishment thereof.

Passed June 11, 1822.

SEC. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi, in general assembly convened*, That all wilful killing by poisoning of any person or persons, done, perpetrated or committed, or that at any time hereafter, shall be done, perpetrated or committed, shall be adjudged, taken and deemed wilful murder of malice prepense; and the offenders therein, their aiders, abettors, procurers, and counsellors, shall on conviction thereof, suffer death.

Wilful killing by poisoning deemed murder and punished with death.

SEC. 2. If any person or persons shall stab or thrust any person or persons, that hath not then any weapon drawn, or that hath not then first stricken the party who shall so stab or thrust, so as the person or persons so stabbed or thrust, shall thereof die, within the space of six months then next following, although

What cases of killing by stabbing shall be deemed murder.

it cannot be proved that the same was done of malice aforethought, every such unlawful killing shall be adjudged, taken and deemed, wilful murder; and the offenders therein, their aiders, abettors, procurers and counsellors, shall, on conviction thereof, suffer death. But this shall not extend to any person or persons, who shall kill any person in his, her or their own defence, or by misfortune, or in any other manner than as aforesaid; nor to any person or persons who, in keeping and preserving the peace, shall chance to kill any person or persons, so as such killing be not done wittingly, willingly, and of purpose, under pretext and color of keeping the peace; nor to any person or persons, who in chastising or correcting his or their child or servant, shall contrary to his, her, or their intent and purpose, chance to kill such child or servant.

Punishment for administering poison with intent to murder.

SEC. 3. Every person or persons who shall hereafter be convicted of the offence of administering, or causing or procuring to be administered, or willingly acting or assisting in administering to any other person, any poison, with intent to murder such person, and where such person shall not thereof die within the space of six months thereafter, then every person so convicted, shall and may be adjudged by the court, before whom the conviction in either of the said cases is had, to be fined in a sum not exceeding one thousand dollars, and imprisoned for a term not exceeding twelve months.

Where trial shall take place, deceased being stricken or poisoned in one county and dying in another.

SEC. 4. Where any person shall be feloniously stricken, stabbed or poisoned, in one county, and shall die of the same stroke, stabbing or poisoning, in another county, then an indictment thereof found by the grand jury of the county where the death shall happen, shall be good and valid in law, and the offender or offenders shall be tried by the circuit court of the same county; any law, custom, or usage, to the contrary notwithstanding.

Where trial shall take place deceased being stricken or poisoned out of the state and dying within the state, or being stricken or poisoned within the state and dying out of the state.

SEC. 5. Where any person shall be feloniously stricken, stabbed or poisoned, at any place out of this state, and shall die of the same stroke, stabbing or poisoning, within this state; or where any person shall be feloniously stricken, stabbed or poisoned, at any place within this state, and shall die of the same stroke, stabbing or poisoning, at any place out of this state, an indictment thereof found by the grand jury of the county in which such death, stroke, stabbing, or poisoning, shall happen, respectively as aforesaid, shall be as good and effectual in law, against the principals and accessaries, as if such felonious stroke, stabbing or poisoning and death, and the offence of such accessaries, had happened in the same county where such indictment shall be found; and the circuit court holden in such county shall and may proceed upon the same, in all respects, as they might or ought to do in case such stroke, stabbing, poisoning, and death, had happened in the same county where such indictment shall be found.

CHAPTER 57.

An act, to prevent and punish bribery and extortion.

Passed June 11, 1822.

Punishment for offering a bribe to any officer.

SEC. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi, in general assembly convened,* That if any person shall promise, offer, or give to any member of the general assembly of this state, or any officer, executive, judicial, or ministerial, of the state, any money, goods, chattels, chose in action, or other property, with intent to influence the vote of such member on any question brought or to be brought before the general assembly or either branch thereof; or to influence the official acts of any officer, executive, judicial, or ministerial, the person or persons so offending, and being thereof convicted by the verdict of a jury, shall be fined in a sum not exceeding one thousand dollars, and imprisoned a term not exceeding one year; and for the second offence shall, in addition to such fine and imprisonment, stand in the pillory for three days, one hour in each day.

Punishment of any officer for accepting a bribe.

SEC. 2. If any member of the general assemby of this state, or any officer of this state, executive, judicial, or ministerial, shall accept any money, goods, chattels, chose in action, or other property, so offered as aforesaid, in consideration of any vote given or to be given by such member on any question brought, or to be brought before the general assembly, or either branch thereof; or in consideration of any official act done and performed or to be done and performed by such officer, executive, judicial or ministerial, such member or officer shall be deemed guilty of a high misdemeanor, and shall, on conviction thereof by the verdict of a jury, be fined and imprisoned as aforesaid, and also be forever disqualified from holding a seat in the general assembly, or any office of honor, profit or trust in this state.

Punishment of a juror accepting a bribe.

SEC. 3. If any juror upon any inquest whatsoever, shall voluntarily, and corruptly, take any thing by himself or by another to give his verdict, and shall be thereof duly convicted, such juror shall be fined at the discretion of the court trying such offender: not less, however, than ten times the value of the thing taken; shall be imprisoned for the space of six months: and shall, moreover, be subject to the same forfeitures of office, and the same disabilities, as if he had been convicted of perjury.

Embracery.

How punishable.

SEC. 4. Every embracer, who shall procure any juror to take gain or profit, and shall be thereof duly convicted, shall be fined at the discretion of the court not less than ten times the value of the thing so taken, shall be imprisoned for the space of six months, and shall moreover be subject to the same forfeitures of office, and the same disabilities, as if he had been convicted of perjury.

Penalty on any officer taking more than is allowed by law.

SEC. 5. No judge, justice, sheriff, or other officer whatsoever, ministerial or judicial, shall receive or take any fee or reward to do his office, but such as is, or shall be allowed by the laws of the state; and if any doth, he shall restore to the party grieved double damages; and further, if any judge, justice, sheriff or other officer aforesaid, shall receive or take, by color of his office, any fee or reward whatsoever not allowed by the laws of this state, for doing his office, and be thereof convicted by the verdict of a jury, either at the suit of the party aggrieved or otherwise, in any court of competent jurisdiction, he shall be punished by fine or imprisonment, or both, at the discretion of the court in which such conviction shall be had.

CHAPTER 58.

An act, for the suppression of vice, and punishing the disturbers of religious worship, and sabbath breakers.

Passed June 13, 1822.

Punishment for profane swearing, cursing or drunkenness.

SEC. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi, in general assembly convened,* That if any person or persons shall profanely swear or curse, or shall be drunk, he, she, or they so offending, for every such offence, being thereof convicted by the oath of one or more witnesses, (which oath any justice of the peace is hereby empowered and required to administer) or by confession before one or more justice or justices of the peace in the county where such offence shall be committed, shall forfeit and pay the sum of one dollar for every such offence; or, if the offence or offences be committed in the presence and hearing of one or more justice or justices of the peace, or in any court of record in this state, the same shall be a sufficient conviction without any other evidence, and the said offender shall, upon such conviction, forfeit and pay the sum of one dollar for every such offence; and if any person or persons shall refuse to make present payment, or give sufficient security for the payment of the same in a reasonable time, not exceeding three months, then the said fines and penalties shall be levied upon the goods of such person or persons, by warrant or precept from any justice of the peace, or court, before whom such conviction shall be, which warrant or precept may be directed to the sheriff of the county, or to any constable in his respective district; and if the offender or offenders be not able to pay the said sum or sums, then he, she, or they, shall be committed to the common jail of the county, for the space of twenty-four hours for every such offence.

No licensed minister to be arrested while performing divine service.

SEC. 2. No officer for any civil cause shall arrest any minister of religion licensed according to the rules of his sect, while such minister shall be publicly preaching or performing religious worship in any church, meeting-house, or other place of religious worship; and every officer so offending, and being thereof convicted, shall be fined and imprisoned at the discretion of the court, and shall moreover, be liable to the action of the party arrested.

Any person disturbing a congregation, shall be arrested and bound to good behavior.

Sec. 3. And if any person shall, on purpose, maliciously or contemptuously, disquiet or disturb any congregation assembled in any church, meeting-house, or other place of religious worship, or misuse any such minister being there, he may be put under restraint during religious worship by any justice present; which justice being present, or if none be present, then any justice before whom proof of the offence shall be made, may cause the offender to find two securities, to be bound by recognizance in a sufficient penalty for his good behavior, and in default thereof, shall commit him to the jail of the county, wherein such offence shall be committed, there to remain for the space of one month.

Penalty for laboring on Sunday.

Sec. 4. If any person on a sabbath day, called Sunday, shall himself be found laboring at his own, or any other trade or calling, or shall employ his apprentices, servants, or slaves, in labor or other business, except it be in the ordinary household offices of daily necessity, or other work of necessity or charity, he shall forfeit and pay the sum of two dollars for every such offence; deeming every apprentice, servant or slave, so employed as constituting a distinct offence.

Merchants not to keep open store or dispose of merchandise on Sunday.

Sec. 5. No merchant or shop keeper, or other person, shall keep open store, or dispose of any wares or merchandise, goods or chattels, on the first day of the week, called Sunday; or sell or barter the same, upon pain that every person so offending, shall forfeit and pay the sum of twenty dollars for every such offence.

Process not to be executed on Sunday.

Sec. 6. No person or persons, upon the first day of the week, called Sunday, shall serve or execute, or cause to be served or executed, any writ, process, warrant, order, judgment or decree, except in criminal cases, or for a breach of the peace; but the service of every such writ, process, order, warrant, judgment or decree, shall be void to all intents and purposes whatsoever; and the person or persons so serving or executing the same, shall be as liable to the suit of the party aggrieved, and to answer damages to him for doing thereof, as if he or they had done the same without any writ, process, warrant, order, judgment or decree: *Provided*, That if information shall be made, by the oaths of two respectable persons to any justice of the peace, or magistrate of any corporate town, that they have good reason to believe that any person liable to have any such process, warrant, order, judgment or decree served upon him, intends to withdraw himself, and escape from this state, under cover and protection of the said first day of the week, called Sunday: in that case it shall be lawful for any officer, duly authorised, being furnished with a certificate of such information, upon oath as aforesaid,

Proviso.

under the hand of the justice of the peace or magistrate as aforesaid, to serve or execute such process, warrant, order, judgment or decree, on the said first day of the week, which shall be as valid and effectually done, to all legal intents and purposes, as if the same had been done on any other day of the week.

Penalty for exhibiting or acting plays, games, or tricks on Sunday.

Sec. 7. If any person or persons whatsoever, shall shew forth, exhibit, act, represent, or perform, or cause to be shewn forth, acted, represented, or performed, any interludes, farces or plays of any kind, or any games, tricks, juggling, slight of hand or feats of dexterity and agility of body, or any bair-baiting, or bull-baiting, or any such like shew or exhibitions whatsoever, on the said first day of the week, called Sunday, every person so offending, and being thereof convicted, before any justice of the peace of the county where the offence shall have been committed, shall, for every such offence, forfeit and pay the sum of fifteen dollars.

Offences specified in this act, not otherwise directed, cognizable before a justice of the peace.

Sec. 8. All offences specified in this act, and not otherwise directed, shall be cognizable before a justice of the peace; and if any person offending in the premises aforesaid, shall be thereof convicted, before any justice of the peace, for the county wherein the offence shall have been committed, upon the view of the said justice, or confession of the party offending, or proof of any witness or witnesses, upon oath or affirmation; then the said justice, before whom such conviction shall be had, shall direct and send his warrant, under his hand and seal, to some constable of the county, commanding him to levy the said forfeitures and penalties, by distress and sale of the goods and chattels of such offender or offenders. And in case no such distress can be had, then every such offender shall, by warrant under the hand and seal of said justice, be committed to the jail of his county, for the space of twenty-four hours, for every offence.

Fines and forfeitures, to whom paid and how appropriated.

Sec. 9. It shall be the duty of the justices before whom such conviction shall be had, to take and receive all such forfeitures and fines as may become due by virtue of this act, and pay the same to the treasurer of the county, wherein the offence was committed, for county purpose.

Limitation.

Sec. 10. No person shall be prosecuted for any offence against this act, unless the prosecution be commenced within ten days after the commission of such offence.

CHAPTER 59.

An act, to prevent unlawful hunting.

Passed June 13, 1822.

Penalty for fire hunting.

Sec. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi in general assembly convened,* That it shall not be lawful for any person or persons to hunt with fire in the night time, at any place within this state, except within his own enclosures; and any person convicted thereof before any justice of the peace of the county wherein the offence was committed, by the oath of one or more credible witnesses, shall forfeit and pay for every such offence, twenty dollars, to be recovered with costs, by warrant of the justice before whom the conviction shall be had, for the use of the county in which the suit may be brought. And in case any person or persons so convicted, shall refuse or neglect to pay such fine, it shall be the duty of the justice before whom he or they shall have been convicted, to commit such person or persons to the jail of the county where the offence shall have been committed, there to remain without bail or mainprize, any term not less than one, nor more than three months.

Penalty for killing or wounding domestic animals when fire-hunting.

Sec. 2. If any person hunting with fire in the night time, shall kill or wound any horse, mare, colt, neat cattle, hog, sheep, or other domestic animal, not being his own, the person so offending shall be liable to an action at law for double damages, to the person aggrieved, in addition to the above penalties.

Punishment of slaves for fire-hunting.

Sec. 3. If any slave or slaves shall be discovered fire hunting, in manner aforesaid, such slave or slaves, on conviction thereof in manner aforesaid, before any justice of the peace for the county wherein the offence may have been committed, shall by order of the said justice receive thirty lashes, well laid on his bare back; and the master or owner of such slave, or the person in whose care he shall be, shall forfeit and pay the sum of ten dollars for each slave so convicted, to be recovered with costs, by warrant of the justice before whom the conviction shall be had, and paid by such justice into the treasury of the proper county for county purposes.

Penalty for sending a slave to fire-hunt.

Sec. 4. If any person convicted before a justice of the peace, in manner aforesaid, of sending or having sent his or her slave, or any slave in his or her charge or care, to fire hunt in manner before mentioned, the person so offending shall be subject to the same pains and penalties, as are provided by this act to be inflicted on fire hunters; but the slave so sent shall receive no punishment.

Persons refusing to give testimony.

Sec. 5. If any person summoned to give evidence against any person accused under this act, shall refuse or neglect to give such evidence, the person so refusing or neglecting, shall be committed to the jail of the county where the offence shall have been committed, until he shall give such testimony.

Captains of militia to cause this act to be read twice a year at the head of their companies.

Sec. 6. The captains of the several companies of militia in this state, shall cause this act to be read at the head of their respective companies twice in every year, under the penalty of forfeiting to the use of the county, for every such neglect, five dollars, recoverable by warrant of any justice of the peace of the proper county, on the oaths of two respectable witnesses.

CHAPTER 60.

An act, to reduce into one act, the several laws to suppress the evil practice of gaming.

Passed June 18, 1822.

All contracts, judgments, securities and conveyances, for gaming debts, void.

Or any wager whatsoever

Or for money lent to persons gaming or wagering.

Sec. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi in general assembly convened,* That all promises, agreements, notes, bills, bonds, or other contracts, judgments, mortgages or other securities, or conveyances, whatsoever made, given, granted, drawn or entered into, or executed, by any person or persons whatsoever, before or after passing this act, where the whole or any part of the consideration of such promise, agreement, conveyances or securities, shall be for money or other valuable thing whatsoever, won, laid or betted at cards, dice, tables, tennis, bowls, or any other game or games whatsoever, or at any horse race, cock fighting, or any other sport or pastime, or on any wager whatsoever, or for the reimbursing or repaying any money knowingly lent or advanced at the time and place of such play, horse racing, cock fighting, or other sport or pastime, to any person or persons so gaming, betting or wagering, or that shall, at such time and place, so play, bet or wager, shall be utterly void, frustrate and of none effect, to all intents and purposes whatsoever; any law, custom, or usage, to the contrary thereof, in any wise notwithstanding.

Leases, mortgages, or sales for gaming debts, to inure to use of heirs of lessor, mortgagor or vendor, as if he had died intestate.

Sec. 2. Any conveyance or lease of lands, tenements or hereditaments, sold, demised or mortgaged, and any sale, mortgage or other transfer of slaves or other personal estate, to any person, or for his use, to satisfy or secure money, or other thing, by him won of, or lent or advanced to, the seller, lessor, or mortgagor or whereof money or other thing, so won, or lent, or advanced, shall be part or all of the consideration money, shall inure to the use of the heirs of such mortgagor, lessor, bargainor, or vendor, and shall vest the whole estate and interest of such person in the lands, tenements, and hereditaments, so leased, mortgaged, bargained or sold, and in the slaves or other personal estate, so sold, mortgaged or otherwise transferred, to all intents and purposes, in the heirs of such lessor, bargainor, mortgagor, or vendor, as if such lessor, bargainor, mortgagor or vendor had died intestate.

When and how loser may recover from winner money lost and paid.

Plaintiff may declare generally without setting forth special matter.

If loser do not sue within three months any other person may.

What recoverable by such person and how appropriated.

Winner compellable to answer on oath, bill for discovery of what was won.

But discharged from penalty by discovery and repayment.

SEC. 3. If any person or persons whatsoever, at any time hereafter, within the space of twenty-four hours, by playing at any game or games whatsoever, or by betting on the sides or hands of such as do play at any game or games, shall lose, to any one or more person or persons, so playing or betting, the sum or value of ten dollars or more, in the whole, and shall pay or deliver the same, or any part thereof, the person or persons so losing and paying, or delivering the same, shall be at liberty, within three months then next following, to sue for and recover the money or goods so lost and paid, or delivered, or any part thereof, from the respective winner or winners thereof, with costs of suit, by summons or warrant, before a justice of the peace, where the amount or value thereof does not exceed twenty dollars; or where such amount or value does exceed twenty dollars, then by action of debt, trover or detinue, as the case may require, to be prosecuted in any court of law within this state having jurisdiction thereof; in which action it shall be sufficient to allege that the defendant is indebted to the plaintiff, or received to the plaintiff's use, the money so lost and paid, or converted the goods won of the plaintiff, to the defendant's use, or detains such goods from the plaintiff, whereby the plaintiff's action accrued to him, according to the form of this act, without setting forth the special matter; and, in case the party losing such money or other thing, as aforesaid, shall not within the time aforesaid, really and *bona fide*, without covin or collusion, sue, and with effect prosecute, for the money or other thing so lost and paid, or delivered, it shall and may be lawful to and for any other person or persons, by any such action or suit, as aforesaid, to sue for and recover the same, and treble the value thereof, with costs of suit, against such winner or winners, as aforesaid, the one moiety thereof to the use of the person or persons suing for the same, and the other moiety to the state, for the benefit of the literary fund; and every person, who, by virtue of this act, shall or may be liable to be sued for moneys or other things so won, as aforesaid, shall be obliged and compellable to answer upon oath, such bill or bills as shall be preferred against him or them, for discovering the money or other thing so won at play, as aforesaid: *Provided, always*, That, upon discovery and repayment of the money or other thing so to be discovered and repaid, as aforesaid, the person and persons discovering and repaying the same, shall be acquitted, indemnified and discharged from any further or other forfeiture, punishment or penalty, which he or they may have incurred, by the playing for and winning such money or other thing so discovered and repaid.

Penalty for gaming or betting at ordinaries, race-fields or other public places.

SEC. 4. To prevent gaming at ordinaries and other public places, which must be often attended with quarrels, disputes and controversies, the impoverishment of many people and their families, and the ruin of the health and corruption of the morals of youth, who upon such occasions, frequently fall in company with lewd, idle, and dissolute persons, who have no other way of maintaining themselves but by gaming: *Be it further enacted*, That, if any person or persons shall, at any time, play in an ordinary, race-field, or any other public place, at any game or games whatsoever, except bowls, backgammon, chess or draughts, or shall bet on the sides or hands of such as do game, every such person, upon conviction thereof, before any justice of the peace in any county within this state, by the oath of one or more credible witnesses, (which oath the said justice is hereby empowered to administer,) or by the view of such justice, or the confession of the party accused, shall forfeit and pay twenty dollars, to be levied by distress, and sale of the offender's goods, by warrant under the hand of the justice before whom such conviction shall be; which penalty and forfeiture shall accrue to the state, for the use and benefit of the literary fund.

How imposed and appropriated.

Penalty for winning or losing more than twenty dollars in twenty four hours.

Sec. 5. If any person, by playing or betting at any game or wager whatsoever, at any time within the space of twenty-four hours, shall lose or win to or from another, a greater sum, or any thing of greater value than twenty dollars, the loser and winner shall be liable to pay one half of the entire sum, above the said sum, of twenty dollars, which he shall so win or lose; and upon information thereof, made to any justice of the peace, and due proof thereof had, such justice of the peace shall levy upon the goods and chattels of the offenders the full penalty incurred, to accrue to the state, for the use and benefit of the literary fund.

Gamesters having no visible means of support, may be bound to good behaviour or committed.

Sec. 6. And, whereas divers lewd and dissolute persons live at great expenses, having no visible estate, profession or calling to support them, but by gaming only: *Be it therefore enacted*, That it shall and may be lawful for any two justices of the peace, in any county within this state, to cause to come or be brought before them, every person within their respective limits whom they shall have just cause to suspect to have no visible estate, profession or calling to maintain himself by, but for the most part supporting himself by gaming; and, if such person shall not make it appear to such justices that the principal part of his expenses is not maintained by gaming, they shall require of him sufficient securities for his good behaviour for the space of twelve months; and, on refusal thereof shall commit him to the jail of the county, there to remain until he shall find such securities; and if such person shall give such securities, and afterwards, within that time, shall play or bet for any money or other valuable thing whatsoever, such playing or betting shall be a breach of the good behaviour, and a forfeiture of the recognizance given for the same.

Penalty for assaulting or challenging to fight on account of money won by gaming or betting.

Sec. 7. And to prevent quarrels happening by gaming, *It is hereby further enacted*, That if any person or persons shall assault and beat, or shall challenge or provoke to fight, any person or persons whatsoever, upon account of any money, or other thing won by gaming or betting, the person or persons so assaulting, beating, challenging or provoking to fight, being thereof convicted, before any justice of the peace in any county within this state, by the oath of one or more credible witness or witnesses, or by the view of such justice, shall forfeit and pay fifty dollars, to be levied by distress and sale of the offender's goods, by warrant, under the hand of the justice before whom such conviction shall be; which penalty and forfeitures hall accrue to the state, for the use and benefit of the literary fund; and moreover shall be liable to the action of the party grieved, as in other cases.

Right of action of party grieved.

Punishment of cheats.

Sec. 8. If any person or persons whatsoever, do or shall, at any time or times, by any fraud, shift, cozenage, circumvention, deceit, unlawful device, or evil practice whatsoever, in playing at or with cards, dice, or any other game or games, or in or by bearing a share or part in the stakes, wagers or adventures, or in or by betting on the sides or hands of such as do or shall play, win, obtain or acquire to him or themselves, or to any other or others, any sum or sums of money or other valuable thing or things whatsoever, every person so winning by such ill practice, and being thereof convicted, by the verdict of a jury, upon indictment or information, shall forfeit and pay five times the value of the money or other thing so won, and shall be deemed infamous, and suffer such corporeal punishment, as in cases of wilful perjury.

Moneys exhibited for gaming purposes liable to seizure; and by whom.

Sec. 9. All moneys exhibited for the purpose of alluring persons to bet against, at any game, and all moneys actually staked or betted whatsoever, shall be liable to seizure by any justice of the peace of the county in which such offence shall be committed, or by any other person or persons under a warrant from such justice, wheresoever the same may be found; and all such moneys so seized shall be accounted for by the person or persons making the seizure, to the justice of the peace issuing such warrant, and be paid by him into the treasury of the state, for the use and benefit of the literary fund, deducting thereout fifty *per centum* upon all moneys so seized, to be paid to the person or persons making the said seizure.

How appropriated.

Penalty for opposing such seizure.

Sec. 10. Any person or persons who shall oppose the seizure of any such moneys as above described, by any person or persons so authorised to make it, shall be liable to a penalty of fifteen hundred dollars, to be recovered in any court having cognizance thereof, in the name of the state, for the use of the literary fund; and shall be, moreover, liable to the action of any party aggrieved by such opposition; and any person or persons who shall take and carry away any part of the said money, after the said seizure shall be declared, shall be guilty of a misdemeanor, and on coviction thereof, by the verdict of a jury, shall be fined and imprisoned at the discretion of the court before whom such offender or offenders shall be tried.

Right of action of the party grieved.

Misdemeanor to carry away money after seizure declared.

Punishment for keeping or

Sec. 11. If any person or persons shall be guilty of keeping or exhibiting any gaming table, commonly called A B C, or exhibiting A B C, or E O, or roulette tables, faro-bank &c.

E O, or roulette, or rowley powley, or rouge et noir, or any faro bank, or other gaming table, or bank of the same, or like kind or description, under any other denomination whatever, or shall be in any manner, either directly or indirectly, interested or concerned in any of the aforesaid gambling tables, bank or games, either by furnishing money or articles for the purpose of carrying on the same, being interested in the loss or gain of said table or bank, or employed in any manner in conducting, carrying on, or exhibiting said table or bank, every person so offending, and being thereof convicted, shall pay a fine at the discretion of the court, not exceeding two thousaud, dollars and shall stand in the pillory three days in succession, one hour in each day.

Penalty on owner, lessee or occupant for permitting such tables to be exhibited in his house.

Sec. 12. If any owner, lessee, or occupant, of any house, outhouse, or other building, shall knowingly permit, or suffer any of the before mentioned tables, bank or games to be carried on, or exhibited, in their said houses, out-houses, or other buildings, and being thereof convicted, shall pay a fine not less than one hundred dollars, nor more than two thousand dollars.

Judges or justices ot the peace to cause such tables to be taken and burnt or destroyed.

May call on the militia for assistance.

Sec. 13. It shall be the duty of every judge, justice of the peace, and city magistrate, to cause to be taken and burnt, or otherwise destroyed, all tables and other gaming apparatus or materials set up, or opened, for the purpose of gaming, contrary to this act; and when any judge, justice of the peace, or city magistrate may deem it necessary, they and each of them are hereby authorised to call on any militia officer, commanding a company in the county where such offence may be committed, whose duty it shall be to order out as many militiamen as he may deem competent to aid and assist such judge, justice or city magistrate, in enforcing the foregoing provisions; and every militia officer, or other person refusing to aid and assist therein, shall forfeit and pay a fine of twenty dollars, to be recovered before any justice of the peace, and paid into the state treasury, for the use and benefit of the literary fund.

Billiard tables may be licensed.

Sum payable for license.

(*The amount collected in the county of Adams appropri-

Sec. 14. Any person wishing to set up, and use a billiard table for play, within this state, may do the same by first obtaining a license from the clerk of the county court of the proper county; which license the clerk is hereby authorised and directed to grant, for the term of one year from the date of such license, or for six months, on the applicant's paying into his hands the sum of five hundred dollars, if for one year, or one half thereof, if for six months, and one dollar as the clerk's fee for granting the same; and every billiard table, the owners and keepers thereof, so set up and licensed as aforesaid, shall be exempted from all the pains and penalties imposed by this act, until such license shall have expired; and every clerk receiving any money for licensing any billiard table as aforesaid, shall pay the same into the treasury of the state,* within two months thereafter, under the penalty of one thousand dollars, to be recovered before any court having jurisdiction thereof, upon motion made by the attorney general or any district attorney, in the same manner as is provided for the recovery of state taxes by the auditor of public accounts.

ated for the use of the Natchez hospital, by an act passed January 9, 1823.)

Sec. 15. If any person shall be guilty of keeping or exhibiting any billiard table, for play, not being licensed agreeably to law, or shall be in any way interested or concerned in said table, and being thereof convicted, shall pay a fine of not less than five hundred dollars, and not more than two thousand dollars, and be imprisoned a term not exceeding six months; and all and every owner, lessee or occupant of any house, out-house or other building, who shall suffer or permit any such billiard table not licensed agreeably to law, to be carried on or exhibted, in his or their house, out-house or other building, and being convicted thereof, shall pay a fine not less than one hundred dollars, nor more than one thousand dollars.

Penalty for keeping or exhibiting a billiard table without license.

Penalty on owner, lessee or occupant for permitting such table not licensed to be exhibited in his house.

Sec. 16. It shall be the duty of all judges, justices of the peace, and city magistrates who shall receive information, or shall have good cause to believe that any person is guilty of any of the offences specified in this act, to cause such person or persons so suspected to be arrested and brought before him; and if, on examination, the judge, justice, or city magistrate, shall be of opinion, that such person is guilty of the charge alleged against him, the said judge, justice, or city magistrate, shall bind him in a recognizance, with good and sufficient security, to appear at the next circuit court of the county wherein such offence may be committed, if such court have cognizance thereof, to answer said charge, and also that he in the mean time will not be guilty of the like offence with which he stands charged; and in default of his finding such security, to commit the offender to the jail of the county.

Duty of judges and justices of the peace on information, or having cause to believe that any person is guilty of an offence specified in this act.

Sec. 17. It shall be the duty of the clerks of the county courts respectively, to furnish the judge of the circuit court of his county on the first day of each term, with a list of the persons having obtained licenses, as aforesaid, within one year preceding said court, and the dates of such licenses; which list, together with this act, shall be by the judge, given in charge to the grand jury; and the grand jury shall present every person who shall have set up, or exhibited a billiard table, without having taken out a license as aforesaid; which person or persons so presented, shall be tried by a petit jury, and on conviction thereof, shall suffer the punishment herein before prescribed for such offence.

Clerks of county court to furnish the judge of the circuit court with a list of persons licensed to keep billiard tables.

List, together with this to be given in charge to the grand jugy.

Sec. 18. If guests or others play at any game contrary to law, in a tavern, or any out-house, or under any booth, arbor, or other place, upon the messuage or tenement in possession of any tavern-keeper, and the keeper thereof shall not endeavor to hinder them, and, if they persist, to give information of the offence, and to give in the names of the offenders, within one month thereafter, to the court or some justice of the peace, his license shall

Penalty on tavern keeper permitting gaming on his tenement and not informing against offenders.

be revoked by the court granting the same, and he shall pay to the informer twenty dollars, unless, being summoned to shew cause to the contrary, he appear and prove such facts as induce such court to believe, not only that he did not know of, but moreover, that he had no reason to suspect such playing.

Circuit courts may revoke license of tavern keeper permitting gaming.

SEC. 19. The several circuit courts of this state shall have the same power of revoking the license of tavern-keepers, in any case of delinquency in permitting unlawful gaming in their houses or taverns, as the county courts possess by this act.

Attorney's fee in the bill of costs on judgment against the offender.

SEC. 20. Whenever a judgment shall be obtained for any fine incurred by a breach of any law for preventing gaming, twenty dollars shall be taxed in the bill of costs for the attorney's fee.

Penalties for the use of the state, how recoverable.

No exception for any defect or want of form in prosecution.

SEC. 21. Every fine, forfeiture, and penalty imposed, declared, inflicted or incurred, or which may be imposed, declared, inflicted or incurred, for the use of the state, under this act, shall and may be recovered in any circuit court in this state, upon presentment or indictment by a grand jury, or upon information filed by the attorney general, or any district attorney, in any such court, except such fines, forfeitures and penalties, as are or may be cognizable in a summary way before one or more justices of the peace; and in every such case, commenced and prosecuted in the circuit court as aforesaid, no exception shall be admitted or sustained for any defect or want of form in any presentment, indictment or information, whatsoever, which may be brought or instituted on behalf of the state; but the court before whom any such presentment, indictment or information shall be brought shall proceed to give judgment according to the very right of the case, any former law, custom or usage to the contrary notwithstanding.

Jurisdiction of courts of equity in cases of gaming.

SEC. 22. The courts of equity shall hereafter have jurisdiction in all cases of gambling consideration, so far as to sustain a bill for discovery, or to enjoin judgments at law.

Lotteries and raffles prohibited.

Penalty.

How recoverable and appropriated.

SEC. 23. No person in order to raise money for himself or another, shall publicly or privately put up a lottery, to be drawn or adventured for, or any prize or thing to be raffled or played for, unless such person be authorised by law; and whosoever shall offend herein, shall forfeit the whole sum of money proposed to be raised by such lottery, raffling or playing, to be recovered by action of debt, in the name of any person who will sue for the same, or by indictment or information in the name of the state, in either case for the use and benefit of the literary fund.

CHAPTER 61.

An act, to prevent the importation and spreading of the small pox, and other contagious diseases.

Passed June 10, 1822.

Penalty for importing small pox or any variolous matter with a design to spread the same &c.

Sec. 1 *Be it enacted by the senate and house of representatives of the state of Mississippi in general assembly convened*, That if any person or persons shall wilfully and designedly presume to import or bring into this state, from any country or place whatever, the small pox, or any variolous or infectious matter of the said disease, for the purpose, or with a design to spread the same by inoculation, or otherwise, or shall inoclate, or procure inoculation for the small pox, after such disease may have been introduced, except under such regulations and restrictions as are hereinafter named, he or she so offending, shall forfeit and pay a sum not exceeding two thousand dollars, and be imprisoned a term not exceeding twelve months, for every offence so committed.

Governor may take measures to prevent the spreading of contagious diseases and to aid the sick.

Sec. 2. The governor of the state is hereby authorised, on his own knowledge or from information given to him by any physician or other person, that the plague, yellow fever, small pox or other contagious disease, has been introduced into a neighboring country or state, or found admittance into this state, or on board any boat or vessel at or near the shores of the same, to take such measures to prevent a communication of the infection, and for the aid and comfort of the sick when within this state, as he shall deem meet. And all expenses incurred in the prosecution of this humane intention, shall on the order of the governor, be paid out of any moneys in the treasury of the state, not otherwise appropriated; but in all cases the said expenses shall be reimbursed by the person or persons for whom such provisions shall have been made, if such person or persons be of ability to pay the same.

Expenses, how defrayed.

Governor may allow inoculation for the small pox in certain cases on petition.

Sec. 3. Whereas in certain cases, inoculation for the small pox, may be not only a prudent but a necessary measure for securing those who are, or may be unavoidably exposed to the danger of taking the disease in the natural way: and for this reason it is judged expedient to tolerate the same, under certain reasonable regulations and restrictions: *Be it therefore further enacted*, That if any person or persons who may wish to be inoculated, shall petition the governor to that effect, he may assign him or them a place within this state, that will not endanger the health of the citizens of the same, where the petitioner or petitioners shall resort for the purpose of being inoculated. And should any master or mistress of a family think himself or herself, his or her family, in danger of catching the small pox in the natural way; such person shall give like information to the governor; and if he deem it prudent and proper, and not dangerous to the health and safety of the people of this state, for such person or family to be inoculated, he may allow the same, or otherwise, as to him shall seem expedient.

Patients not to go abroad or into public road &c.

SEC. 4. No patient in the small pox shall, until after having obtained a certificate from the attending physician, or other person qualified to give such certificate, of his or her recovery, and of his being perfectly clean in his person and clothes, remove from the place where he or she shall have had the small pox, to go abroad in the company of other persons who have not had the disease, or go into any public road or highway, where travellers usually pass, without retiring out of the same, or giving notice on the approach of any passenger, under the penalty of forfeiting and paying, for every such offence, the sum of one hundred dollars; and if such person be a servant or slave, such sum shall be paid by his or her master or mistress.

Money forfeited under this act, how recovered and appropriated.

SEC. 5. All moneys forfeited under this act, may be sued for in any court of record within this state, having competent jurisdiction; and the moneys when recovered, shall be appropriated, the one half to the informer, and the other half to the use of the state, and paid into the state treasury.

CHAPTER 62.

An act, concerning hawkers and pedlers.

Passed June 10, 1822.

No person to exercise the business of hawker or pedler without license.

How obtainable

SEC. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi in general assembly convened*, That it shall not be lawful for any person or persons to follow, use or exercise, the business of hawker or pedler, within this state; unless he or she shall have first obtained a license for that purpose, from the clerk of some county court in this state, which license the respective clerks of the several county courts are hereby authorised and required to grant on application made to him for such license, the applicant or applicants complying with the regulations hereinafter mentioned; which license shall authorise the said hawker or pedler, to hawk and peddle throughout the state; and for every such license, the applicant shall pay to the clerk granting the same, a fee of two dollars; and every such license shall continue in force for the term of one year from the date thereof, and no longer.

To continue in force one year from date.

Sum to be paid for license.

SEC. 2. Every person applying for a license as aforesaid, and conveying merchandise on foot, shall pay to the clerk granting the same, the sum of ten dollars; every person obtaining a lisence to travel with a horse or other beast of burden, shall pay the sum of twenty dollars; every person obtaining a license to travel with a two wheel carriage, shall pay the sum of thirty dollars; every person obtaining a license to hawk and peddle as aforesaid, and travelling with a four wheel carriage, shall pay for the same the sum of forty dollars; and every person applying for such license to convey merchandise with a boat or other water craft, shall pay the sum of thirty dollars.

Sums received for such licenses by the clerk of the county court to be paid into the state treasury.

SEC. 3. Every sum or sums of money received by the clerk of any county court in pursuance of this act, for licenses granted to hawkers and pedlers, shall be accounted for and paid over by them into the treasury of the state, on the first Mondays in January and July, in each and every year; and every clerk failing to account and pay over the same as aforesaid, shall forfeit and pay the sum of two hundred dollars, to be recovered by action of debt, or information, in the name of the state, in any court of competent jurisdiction, and paid into the treasury of the state.

Penalty on failure.

Penalty for hawking and peddling contrary to the provisions of this act.

SEC. 4. If any person or persons shall be found hawking, peddling or travelling from place to place, contrary to the provisions of this act, in any county within this state, he or she so offending, shall forfeit and pay the sum of one hundred dollars, to be recovered before any court having competent jurisdiction, in the name of any person who will sue for the same; one moiety thereof to the person suing for the same, and the other moiety to be paid into the treasury of the state, for the use and benefit of the literary fund.

This act not to extend to commerce on navigable rivers.

SEC. 5. Nothing in this act contained, shall be construed to extend to the ordinary commerce of the Mississippi, or other navigable rivers within the limits of this state.

CHAPTER 63.

An act, concerning strays and drovers, horses, cattle and other stock, and directing stock brands and marks to be recorded.

Passed June 25 1822.

Person taking up a stray to give information to a justice of the peace.

SEC. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi, in general assembly convened,* That every person who shall take up any stray which shall be found on his plantation or land, shall forthwith give information thereof to some justice of the peace of the county, and make oath before such justice, that the same was taken up at his or her plantation or place of residence, or on his or her land adjoining the same, and that the marks and brands have not been defaced or altered since the taking up; and thereupon the said justice shall issue his summons to two disinterested freeholders, or landholders of the neighborhood, commanding them to value and appraise the same, without partiality, favor or affection, and certify the valuation under their hands, together with a particular discription of the kind, marks, brands, stature, color and age; which certificate shall be attested by the justice, and transmitted by him to the ranger of the county, within ten days thereafter, to be by such ranger entered in his book to be kept for that purpose, for

To be appraised by two freeholders or landholders.

which the justice and ranger shall each receive fifty cents, to be paid by the taker up: *Provided*, That if two or more strays of the same species, are taken up by the same person at the same time, they shall be included in one entry, and one advertisement; and the justice and ranger shall receive no more fees than for one of such strays.

Pound to be erected at the court house in each county.

Strays to be kept therein on the first day of the county or circuit court, from twelve to four o'clock.

Expense of erecting pound how defrayed.

Person to be appointed to take care of the pound.

His compensation.

SEC. 2. The justices of the several county courts within this state, shall cause a pound to be erected at their respective court houses, with a good and sufficient fence, and a gate or bars, where all stray horses, mares or mules, above two years old, taken up within the county, shall be kept on the first day of the two courts, whether county or circuit courts, next succeeding the time at which they may be taken up, from twelve to four o'clock on each day, that the owner may have an opportunity of claiming his property; and the expense of making such pounds shall be defrayed out of the state treasury, on a certificate thereof made by such courts to the auditor of public accounts. And the said justices shall appoint some person to take care of the said pound, and to attend the same on court days, who shall be entitled to demand and receive from every person putting in a stray, the sum of twenty five cents, at every time the same may be put in, which shall be repaid by the owner thereof.

Appointment of rangers.

Bond and security.

Their duties.

Their fees.

Where to keep their office.

SEC. 3. There shall be commissioned by the governor, on the recommendation of the county court, of each county, within this state, respectively, a suitable person to hold the office of ranger, in each county, who shall enter into bond with good and sufficient security, to be approved by the court, or any justice thereof, in the penalty of five hundred dollars, payable to the presiding justice of the county court, and his successors in office, conditioned for the faithful performance of the duties of his office; which bond shall not be void on the first recovery, but may be put in suit and prosecuted by any party injured, until the whole penalty thereof be recovered, and who shall also take the oath of office prescribed in the constitution. And the ranger so appointed, shall keep a book, in which he shall register all certificates of strays delivered to him by the taker up of strays, or transmitted to him by any justice or justices of the peace of the county, and shall file the same in regular order. It shall be his duty to cause a copy of the certificate of every appraisement to be published three times in the nearest newspaper. He shall also make out a fair and correct list of all strays, and affix the same at the door of the court house of his county, on the first day of each term of the county court, omitting such strays as are proven away, sold, escaped or dead, under a penalty of five dollars for every such neglect or omission. The ranger shall receive as fees of office, for every horse or mule or cow, fifty cents; for every sheep or hog, twelve and a half cents; for every certificate transmitted to the printer, one dollar. The ranger within three months after his appointment, shall reside or keep an office within one mile of the county court house, or the place where court is usually held.

When stray dies or escapes, taker up to report the same to ranger.

Sec. 4. When any stray as aforesaid shall be found dead, or shall have escaped, the taker up shall, without delay make report thereof to the ranger, on oath, who shall make a memorandum of the same in the margin of his book, where the certificate of such stray was registered.

When stray is proven away and owner and taker up cannot agree as to the expenses.

Sec. 5. When any stray shall be proven away, and the owner and taker up cannot agree as to the expenses, application may be made by either party to a justice of the peace of the county, who shall require two freeholders of the neighborhood, who shall have privilege to appoint an umpire, to adjust the dispute, and their award under their hands, shall be final.

Strays to be sold after twelve months if no owner appear.

Sec. 6. After the expiration of twelve months from the date of any certificate of strays as aforesaid, if no owner appear, to prove his property, the stray or strays so taken up as aforesaid, shall be exposed to public sale for cash, by the ranger, who shall give public notice of such sale, at least thirty days previous thereto, by advertisement thereof at the court house of the county, or at the place where courts are usually held, and two other public places in the county; and he shall describe the stray or strays intended to be sold, in the advertisement; and from the proceeds of such sales, the ranger is hereby directed to pay to the taker up all necessary contingent charges incurred in taking up and keeping the same, and the sum of five dollars as a reward for taking up the same: *Provided*, That in no case shall the taker up receive a greater sum for taking up, expenses and reward, than a moiety or half part of the money arising from the sales of the strays so taken up.

Advertisement of the sale.

Taker up to be paid from the proceeds of the sale.

Net proceeds to be paid into the county treasury.

Sec. 7. It shall be the duty of the ranger, as soon as money shall be made by the sale of the stray or strays, to pay over the net proceeds thereof to the county treasurer, to be appropriated to county purposes, deducting five *per centum* commissions for his services; and in case of default of the ranger, his bond shall be put in suit by the presiding justice of the county court, for the time being, for such delinquency: and it shall be lawful for any person claiming the proceeds of the sale of such stray or strays, to make claim to the same, before the county court, and an order shall issue for the net proceeds thereof on the county treasurer, on proof of title to the same.

Person claiming the proceeds of the sale may make his claim before the county court.

Penalty for selling, bartering or removing strays out of the state.

Sec. 8. If any person shall take or send away any stray or strays out of the state, on any pretence whatsoever, or shall trade, sell or barter the same, he or she so offending, shall forfeit and pay one hundred dollars, to be recovered in any court of this state, having competent jurisdiction; one half to the informer, and the other half to the use of the county, wherein the offence shall have been committed; and moreover shall pay to the owner the amount of the appraisement, or if no owner appear, then to the county, for the use of the owner.

Person taking up not liable for using strays, or if they die or accidentally escape.

SEC. 9. No person taking up a stray or strays, shall be liable for using the same; and if any stray so taken up shall die, or accidently get away, before the owner shall claim his or her right, the taker up shall not be answerable for the same; *Provided*, Such death be not occasioned by the ill trreatment or abuse of such stray or strays.

Penalty for taking up stock, contrary to this act.

SEC. 10. Any person who shall presume to take up as a stray, any horse, mare, mule, cattle, or other stock of any kind or description whatsoever, contrary to the provisions of this act shall, for every such offence, forfeit and pay one hundred dollars, recoverable with costs, in any court of this state having competent jurisdiction, one half to the county, and the other half to the person suing for the same.

Strays valued at a sum not exceeding twenty dollars to be sold in six months, or not exceeding ten dollars, in three months.

Advertisement in such cases.

SEC. 11. In all cases where any stray is not valued to a sum exceeding twenty dollars, the ranger shall proceed to sell the same, for cash, in six months after the appraisement thereof; and when the value of the stray or strays shall not amount to a sum exceeding ten dollars, in three months after the date of the certificate of appraisement. And the ranger shall not be required to advertise in a public newspaper, any stray or strays where the same is, or are not valued to twenty dollars or upwards; but shall advertise the same in three of the most public places in the county, at least twenty days before the day of the sale, one of which places shall be at the door of the court house of said county: *Provided*, That in all cases, where any stray is taken up, the appraisers thereof shall be sworn to appraise the same to the true valuation, according to the best of their judgment.

Appraisers to be sworn.

Drover not to drive stock from the range to which they belong.

SEC. 12. It shall not be lawful for any drover or other person, to drive any horses, mules, cattle, hogs or sheep, from the range to which the same may belong; but it shall be the duty of every drover or other person who may be driving horses, mules, cattle, hogs or sheep, if any such stock not belonging to his drove, should join them, immediately to halt his drove, at the nearest pen, or some other convenient place, and separate all such stock as do not properly belong to him, or the person or persons for whom he may be employed to collect or drive stock.

But shall separate from his drove, stock not belonging to him.

Penalty for violating the provisions of the preceding section.

SEC. 13. Any drover or other person who shall violate the provisions of the preceding section, shall, for every such offence, forfeit and pay the sum of twenty dollars, with costs, recoverable before any justice of the peace of the proper county, for the use of the person suing for the same, and shall, moreover, be liable for damages in an action on the case, to the party injured. And when any slave or slaves, employed in driving stock of any kind, shall violate the foregoing provisions of this act, his or their owner or employer shall be liable, in like manner, for such transgression.

Stallions suffered to run at large may be gelded.

SEC. 14. If any person shall wilfully or by neglect, suffer any stallion, above the age of two years, except such as are usually kept up, and happen to get out by accident, to run at large in the woods, or in any enclosed range, it shall be lawful for any person to confine and geld such stallion at the risk of the owner.

Every person having stock to have a brand and ear mark different from any other in the county.

Brand and mark to be recorded.

SEC. 15. Every person in this state, who hath any horses, cattle or other stock, shall have a brand and ear mark, different from the brand and ear mark of every other person in the same county; which ear mark and brand shall be recorded in the office of the clerk of the county court of the county where such horses, cattle or other stock, are; for which the clerk shall receive as his fee, twenty-five cents for all his services therein. And no brand or mark, being the same as a brand or mark already recorded, shall be admitted to record, but the person having the same, shall be obliged to alter it, except as hereinafter excepted.

Disputes as to the right of a brand or mark how decided.

SEC. 16. When any dispute shall arise respecting the right to a brand or mark, either party may apply to a justice of the peace of the county, who shall summon the adverse party to appear before him, on a certain day expressed in the summons, not less than five, nor more than ten days from the time of application. And the said justice shall, upon the request of either party, issue subpœnas for such witnesses as he may require, directed to any constable of the said county, who, together with the same witnesses, shall receive the same fees, and be liable to the same penalties, as are allowed or inflicted for such services and attendance, or neglect in the county courts. And it shall be the duty of the said justice to give judgment thereon; a transcript of which, certified by the said justice, shall be sufficient authority for the clerk to record the said brand and mark: *Provided*, That every person who may think himself or herself aggrieved thereby, may appeal to the next county court to be held in the said county, and not afterwards.

Indians or slaves not to be sent into the range to brand or mark stock, unless in company with a white person.

Penalty.

SEC. 17. No person whosoever shall send or permit any slave or indian to go into any of the woods or ranges in the state, to brand or mark any horse, mare, colt, mule, ass, cattle, hog or sheep, under any pretence whatsoever, unless the said slave or indian be in company, and under the direction of some reputable white person, who shall therein proceed according to the provisions of this act; and if any person be convicted thereof, he shall forfeit and pay, for every animal so branded and marked, twenty dollars, recoverable by action of debt in any court in this state, having competent jurisdiction; one half to the use of the county, and the other half to the informer.

Stock not to be removed out of the county or state until the number, brands and marks are recorded.

SEC. 18. No person shall be at liberty to remove any stock without the limits of any county, or without the limits of the state, until they shall have all the number, marks and brands of such stock so intended to be removed, recorded in the office of the clerk of the county court of the county in which such stock

Penalty.

Proviso.

may run; and any person failing herein shall pay a fine not less than twenty, nor more than one hundred dollars, recoverable before any court of competent jurisdiction, and applied to the use of any person, who may prosecute for the same: *Provided*, That this provision shall not affect a removal from one county to another, where such removal is intended to be permanent.

CHAPTER 64.

An act, to prevent trespasses in certain cases, and declaring what shall be deemed a lawful enclosure.

Passed June 15, 1822.

What shall be a lawful fence.

Remedy against owners of beasts breaking through such fence.

Sec. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi, in general assembly convened*, That if any horses, mares, mules, asses, cattle, hogs, sheep or goats, shall break into any grounds enclosed with a strong and sound fence, five feet high, well staked and ridered, or sufficiently locked, and so close that the beasts breaking into the same, could not creep through, which shall be deemed a lawful fence, the owner of such horses, mares, mules, asses, cattle, hogs, sheep or goats, or any of them, shall, for the first trespass so committed, make reparation to the party injured, for the value of the damage he shall sustain; and for every other trespass thereafter, double damages, to be recovered with costs, in any court of competent jurisdiction.

Condition of fence may be proved on trial.

Three freeholders appointed to view the fence.

Their duty and testimony.

Sec. 2. The condition of the fence, at the time the trespass was committed, may be proved to a jury upon trial; and upon complaint made by the party injured, before any justice of the peace of the county wherein such trespass shall be committed, such justice is hereby empowered and required to issue his order, without delay, to three honest and respectable freeholders of the neighborhood, no ways related to the party injured, nor interested concerning the trespass, reciting therein the complaint, and requiring them to view the fence where the trespass is complained of, and to make memorandums of the same, and their testimony in such case shall be good evidence to the jury touching the lawfulness of the fence.

Penalty for killing, or hurting beasts in grounds not sufficiently fenced.

Sec. 3. If any person injured for want of such sufficient fence, shall hurt, wound, lame, kill or destroy, or shall cause to be hurt, wounded, lamed, killed or destroyed, by shooting, hunting with dogs, or otherwise, any of the kind or breed of horses, mules, asses, cattle, hogs, sheep or goats, he or she so offending shall satisfy and pay to the owner of the beast or beasts so hurt, wounded, lamed, killed or destroyed, double damages, with costs, recoverable in any court of competent jurisdiction: *Provided*, That if the party liable to damages as aforesaid, in either case will abide by, and pay to the party injured, what shall be deemed reasonable and just, by three respectable neighbors, indifferently chosen, to assess the same, it shall be a bar against such suit.

Charges for fences dividing the lands of neighbors to be equally borne by both parties.

Sec. 4. For the better ascertaining and regulating of partition fences, it is hereby directed, that where any neighbors shall improve lands adjacent to each other, or where any person shall enclose any land adjoining to the land of another, already fenced in, so that any part of the first person's fence becomes the partition fence between them; in both these cases the charge of such division fence, so far as enclosed on both sides, shall be equally borne and maintained by both parties; to which, and other ends, in this law mentoned, each county court within this state, shall nominate and appoint, and is hereby required to nominate and appoint as many honest and respectable citizens, being freeholders, as they shall think fit, for each county respectively, to view all such fences about which any difference may happen or arise And the aforesaid persons in each county, shall be the sole judges of the charge to be borne by the delinquent party or parties, and of the sufficiency of all fences, whether partition fences or others; and where they adjudge any fence to be insufficient, they shall give notice thereof to the owners or possessors; and if any one of the said owners or possessors, upon the request of the other, and due notice given by the said reviewers, shall refuse to make or repair such fence or fences, or to pay the moiety of the charge of any fence before made, being a division fence, within ten days after notice given, then, upon proof thereof before two justices of the peace of the proper county, it shall be lawful for the said justices to order the person aggrieved, and suffering thereby, to repair the said fence or fences, who shall be reimbursed his costs and charges by the person so refusing to make good the said partition fence or fences; and the said costs and charges shall be levied upon the offender's goods and chattels, under warrant from the said justice, by distress and a sale thereof; the overplus, if any, to be returned to the party offending.

Persons to be apppinted in each county to view fences.

To be sole judges of the charges and of the sufficiency of fences.

Persons may enclose their ground with walls, palisades, dykes, hedges and ditches.

Sec. 5. Nothing herein contained shall be construed to prevent or debar any person or persons, from enclosing his or their grounds with sufficient walls or palisades, or by dykes, hedges and ditches. All such walls and palisades to be in height, at least five feet from the ground. And all dykes to be at least three feet in height from the bottom of the ditch, and planted or set with thorn or quickset, so that such enclosures shall fully answer and secure the several purposes meant to be answered and secured by this act: *Provided*, That such walls and palisades, and dykes, hedges and ditches, shall be subject to all provisions, inspection and restrictions, to which, by this act, any other enclosure or fence is made liable, according to the true intent and meaning thereof.

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Penalty for taking away boats or vessels.

SEC. 6. Every person who without leave of the owner or other person having the same in care or charge, shall take away any boat or vessel, shall for every such offence, pay ten dollars to the owner thereof, over and above the damages such boat or other vessel shall sustain, and over and above the expense of bringing back such boat or vessel, to be recovered with costs, in any court of competent jurisdiction. And where there shall be several offenders in one trespass, each person shall be liable for the whole penalty.

Where several combine in one trespass.

Penalty for cutting down, carrying away or destroying trees.

SEC. 7. If any person shall cut down, carry away, or destroy any cypress, white oak, pine, poplar, black walnut, pecan, or cherry tree, upon any lands, not his own, without first having the consent of the owner, he shall forfeit and pay to the owner thereof, ten dollars for every such tree, so cut, carried away, or destroyed, without leave as aforesaid; and for every other tree so cut, carried away, or destroyed, without leave as aforesaid, he shall forfeit and pay the sum of three dollars, except such trees as may be cut or taken out of, or for the use of public roads, to be recovered before any justice of the peace of the proper county, or before any court of competent jurisdiction, with costs.

Throwing down or opening gates, bars, or fences or injuring buildings.

SEC. 8. If any person shall throw down, or open any gates, bars, fence or fences, enclosing lands not his own, or shall in any manner injure any building not his own, he shall be liable to such damages as shall be assessed by a jury with costs, to be recovered as last aforesaid.

CHAPTER 65.

An act concernig mills, mill-dams, cotton gins, and other machines erected on water courses.

Passed June 13, 1822.

Mode of proceeding where person applying for leave to build a mill &c. owns the land on one side only of the stream.

SEC. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi in general assembly convened*, That when any person owning lands on one side of any water course, the bed whereof belongs to himself, or owning lands on one side of a water course, the middle of the bed whereof shall be the dividing line between the lands of himself and any other person or persons, and desiring to build a water grist mill, cotton gin, or other machine or engine useful to the public, on such lands, and to erect a dam across the same for working the said mill, cotton gin, or other machine or engine, shall not himself have the fee simple property in the lands on the opposite side thereof, against which he would abut his dam, he shall make application for a writ of *ad quod damnum*, to the county court of the county wherein the lands proposed for the abutment are, having given ten days previous notice to the proprietor thereof, if he be to be found in the county, and if not, then to his agent therein, if any he have, which court shall thereupon order their clerk to issue such

Notice to the proprietor of land on opposite side or his agent.

writ, to be directed to the sheriff, commanding him to summon and empannel twelve fit persons, being freeholders, to meet upon the lands so proposed for the abutment, on a certain day to be named by the court, and inserted in the said writ; of which notice shall be given by the sheriff to the proprietor or his agent as before directed, if neither of them was present in court at the time of the order made.

Writ of *ad quod damnum.*

Notice of meeting of jury.

SEC. 2. The freeholders taken shall be charged on oath by the said sheriff, impartially, and to the best of their skill and judgment, to view the said lands, so proposed for an abutment, and to locate and circumscribe by certain metes and bounds, one acre thereof, having due regard therein to the interests of both parties, and to appraise the same, according to its true value; to examine the lands above and below, of the property of others, which may be probably overflowed, and say to what damage it will be of to the several proprietors, and whether the mansion house of any such proprietor, or the offices, curtilage, or garden thereunto immediately belonging, or orchards, will be overflowed; to inquire whether, and in what degree, fish of passage, and ordinary navigation will be obstructed: whether by any, and by what means such obstruction may be prevented; and whether, in their opinion the health of the neighbors will be annoyed by the stagnation of the waters.

Charge to be given them.

To locate and appraise one acre of land for abutment.

To examine lands above and below and ascertain damages.

Other objects of inquests.

SEC. 3. The inquest so made, and sealed by the said jurors, together with the writ, shall be returned by the said sheriff to the succeeding county court, who shall thereupon order summonses to be issued to the several persons, proprietors or tenants of the lands so located, or found liable to damages, if they be found within the county, and if not, then to their agents therein, if any they have, to shew cause why the party applying should not have leave to build the said mill, cotton gin, machine or engine, and dam.

Return of inquest and writ

Summonses to proprietors or tenants of lands so located or found liable to damages, or their agents.

SEC. 4. If any person proposing to build such mill, cotton gin, machine or engine, and erect such dam, shall have the fee simple property in the lands on both sides the stream, or owning the lands on one side of a water course, shall desire to erect such mill, cotton gin, machine or engine, and to abut his dam on any rock or island in the said water course, or in any other manner to extend his dam only in part across such water course, not abutting it on the opposite bank; he shall apply to the county court of the county wherein the mill house, cotton gin, machine or engine, will stand, for a like writ; which writ shall be directed, executed and returned, as prescribed in the former case. The owner of such rock or island, or his agent, if to be found, either in the county in which such writ may be applied for, or in the county in which such rock or island may be, shall have like notice of the applicaton for such writ, and of the execution thereof, as is herein required to be given to the owner of land on the opposite side of a stream, or to his agent.

Where lands on both sides or on one side &c. belong to applicant, wishing to abut his dam on a rock or island or to extend it across part only of the stream.

Writ of *ad quod damnum.*

Notice to the owner of such rock or island or his agent.

In what cases leave shall not be granted.

Where it may or may not be granted at discretion of court.

Court in granting leave may impose reasonable conditions.

SEC. 5. If, on such inquest, or on other evidence, it shall appear to the court, that the mansion house of any proprietor, or the offices, curtilage or garden, thereto immediately belonging, or orchards will be overflowed, or the health of the neighbors be annoyed, they shall not give leave to build the said mill, cotton gin, machine or engine, and erect the said dam; but, if none of these injuries are like to ensue, they shall then proceed to consider, whether, all circumstances weighed, it be reasonable that such leave should be given, and shall give or not give it accordingly; and if given, they shall lay the party applying under such conditions for preventing the obstruction, if any there will be, of fish of passage, and ordinary navigation, and for preventing any impediment to the convenient crossing of the water course, on which the dam may be erected, as to them shall seem right.

Party obtaining leave, to pay value of acre located and damages assessed.

To begin his mill within one year and finish it within three. Also to begin to rebuild it, if destroyed and finish rebuilding within the same period.

Consequence of neglect in either case.

Provision as to infants &c.

And rights of remainder-men and revisioners.

SEC. 6. If the party applying obtain leave to build the said mill, cotton gin, machine or engine, and erect the said dam, he shall, upon paying respectively to the several parties entitled, the value of the acre located, and the damages, which the jurors find will be done by overflowing the lands above or below, become seized in fee simple of the said acre of land, and be authorised to proceed to erect such mill, cotton gin, machine or engine, or dam. But if he shall not begin to build the same within one year, and finish it within three years after such leave of the court obtained, so that it be in good condition for public use; or, if such mill, cotton gin, machine or engine be at any time destroyed, or rendered unfit for public use, and the owner or occupier thereof shall not begin to rebuild or repair it, within one year, and finish such rebuilding or repair, so that it be in good condition for public use, within three years from the time of such destruction or unfitness for use, the title to any land condemned, under this act, shall revert to the former owner, his heirs or assigns, and the leave granted by the court to erect any such mill, cotton gin, machine or engine, or dam, shall cease and be void. Saving however, to all persons *non compos mentis*, infants, *femes covert*, or imprisoned, and to all persons out of the state, in the service thereof, or of the United States, three years after their several disabilities are removed, for the purpose of rebuilding or repairing any mill, cotton gin, machine, engine or dam, belonging to them at the time of its destruction, or of its becoming unfit for public use: and saving also, the rights of remainder-men and reversioners in the manner herein provided.

Their powers, where tenants for life or years fail to rebuild within the time any mills &c. not erected by such tenant.

SEC. 7. If at any time, any tenant for life or years of any such mill, cotton gin, machine or engine, (except those erected by such tenant himself, after the commencement of his estate,) which has been, or shall be destroyed, or which has become or shall become unfit for public use, shall have failed to commence or finish the rebuilding or repair thereof, within the time herein before limited, it shall be lawful for the person or persons next entitled in remainder or reversion to such mill, cotton gin, machine or engine, to enter thereupon, and to rebuild or repair the same, and to hold and to enjoy it, with its appurtenances, for his own use and benefit: *Provided*, That such remainder-man or reversioner, (if under none of the legal disabilities herein enumerated at the time when such right shall accrue,) shall make such entry, and complete such rebuilding or repair, within three years from the time of such failure of the tenant for life or years; or, (if *non compos mentis*, an infant, *feme covert*, or imprisoned, or if out of the state, in the service thereof, or of the United States.) shall make such entry and complete such rebuilding or repair, within three years after the disability removed.

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How owners of mills may obtain leave to raise their dams.

Sec. 8. When any owner of a mill, cotton gin, machine or engine, heretofore or hereafter established by law, may think it necessary to raise his dam, the county court of the county wherein the pond lieth, upon application to them, shall grant a second writ of *ad quod damnum*, to value the additional damage done thereby, under the same rules and regulations as are herein before directed.

No inquest or judgment thereon, to bar prosecutions or actions for damages not estimated by the jury.

Sec. 9. No inquest taken by virtue of this act, and no opinion or judgment of the court thereupon, shall bar any public prosecution or private action, which could have been had or maintained if this act had never been made, other than prosecutions and actions for such injuries as were actually foreseen and estimated upon such inquest.

When no toll shall be taken at water grist mills.

Sec. 10. No person shall take any toll or other compensation for the grinding of any grain, at any water grist mill hereafter built, unless such mill be established by order of court pursuant to the provisions of law, except the lands on which such mill is built, and which shall be rendered unfit for cultivation by the dam erected across any water course, belong on both sides such water course, exclusively to the person or persons erecting such mill and dam; and, if any person shall offend herein, he shall forfeit and pay, for every such offence, the sum of five dollars to the state, for the use of the literary fund; to be recovered, by warrant, before any justice of the peace of the proper county, with costs.

Penalty for offending herein.

Duty of millers.

Sec. 11. All millers shall well and sufficiently grind the grain brought to their mills for the usual consumption of the persons bringing the same and their families, and in due turn as the same shall be brought, and may take for the toll, one eighth part and no more, of all grain of which the remaining part shall be ground into meal, and one twelfth part, and no more, of all grain of which the remaining part shall be ground into hominy or malt.

Toll on grain ground into meal.

Or into hominy or malt.

Penalty for not grinding well and in due time or for taking

Sec. 12. Every miller or occupier of a mill, who shall not well and sufficiently grind as aforesaid, or not in due turn as the same shall be brought, or take or exact more toll, shall, (whether more than legal toll.

Punishment of miller if a slave for first and second conviction.

Penalty on master &c. where slave is a third time convicted.

Owner of mill may grind for his family at any time.

Miller not obliged to run but one pair of stones for persons bringing grain.

such mill be established by law or not) forfeit and pay to the party injured, five dollars, for each and every offence, recoverable with costs before any justice of the peace of the county where such offence shall be committed. And where the miller shall be a slave, free negro, or mulatto, he shall upon the first conviction for such offence, receive ten lashes, and on the second conviction, twenty lashes, on his or her bare back well laid on, in lieu of the forfeiture aforesaid; but, upon a third conviction, the master of such slave, where the party is a slave, or his overseer or agent, shall be liable to pay to the party injured five dollars, recoverable as aforesaid, and so for every such offence by such slave afterwards committed: *Provided*, That every owner, or occupier, of a mill, shall have a right, at any time, to grind his or her own grain, for the consumption of his or her own family: *And provided*, That no miller shall be obliged to run more than one pair of stones, for the purpose of grinding grain brought to his mill, for the consumption of the persons bringing the same and their families.

Millers to keep sealed measures and toll dishes, and to measure grain by strike measure.

Provision where miller is a slave or servant.

Where the owner is non-resident and without known attorney.

SEC. 13. Every owner or occupier of a mill established, or grinding for toll, as aforesaid, shall keep therein sealed measures of half bushel and peck, and a toll dish sealed, and shall measure all grain by strike measure, under the penalty of paying five dollars for every such failure, recoverable with costs, before a justice of the peace of the county wherein such mill shall be, to the use of the informer: and if the miller be a slave or servant, his master or owner shall be liable to the penalty; or, if the owner of such mill shall not live within the same county, nor have any known attorney therein, the appearance of such servant or slave before the justice, to whom such complaint shall be made, shall be sufficient for him to proceed against the master or owner; but if he or she, his or her known attorney, live in the county, his or her appearance shall be required.

Duty of owner of dam over which a public road passes.

Provision where such dam is destroyed by tempest or accident.

SEC. 14. The owner or occupier of every dam, over which a public road passes, shall constantly keep such dam in repair, at least twelve feet wide at the top through the whole length thereof, and shall keep and maintain a bridge of the like breadth, with strong rails on each side thereof, over the pier head, flood gates, or any waste cut through or round the dam, and over any race or canal leading to or from the mill or pond, over which a public road may pass, under the penalty of two dollars for every twenty-four hours failure; but, where a mill-dam shall be carried away, or destroyed by tempest or accident, the owner or occupier, thereof shall not be liable to the said penalties, from thenceforth until one month after such mill shall have been so repaired as to have ground one bushel of grain.

This act not to extend to private mills propelled by horses.

SEC. 15. Nothing in this act contained shall be construed to extend to any grist mills propelled by horses, mules or oxen, erected by the owner or proprietor of any plantation, for the use of such owner or proprietor, and which may ocasionally be used in grinding for the neighborhood.

Owners of cotton gins, within half a mile of a town required to remove the cotton seed.

Sec. 16. Every owner or proprietor of any cotton gin, erected in, or within half a mile of any city, town or village, is hereby required to remove or destroy all the cotton seed which may fall from such gin, so that the same shall not prejudice the health of the inhabitants, of such city, town or village, and every person being the owner or proprietor of a cotton gin situated as aforesaid, who shall neglect or refuse to remove or destroy the cotton seed in and about such gin, having received five days notice, shall forfeit and pay the sum of twenty dollars, for every day he or she shall so neglect or refuse to remove or destroy the cotton seed as aforesaid, to be recovered by warrant in the name of the state, before any justice of the peace of the proper county, and paid into the treasury of the state, for the use and benefit of the literary fund.

Penalty for neglect.

Cotton seed not to be thrown into streams of water used for drinking or fishing.

Sec. 17. No person, who shall be the owner or proprietor of any cotton gin, shall be authorised to throw, or permit to be thrown the cotton seed from such gin into any river, creek or other stream of water, which may be used by the inhabitants for drinking or fishing therein; and any person offending herein, shall forfeit and pay for every such offence the sum of two hundred dollars, to be recovered in any court of competent jurisdiction, by action of debt or information, in the name of any person who will sue for the same, one moiety thereof to such person, and the other moiety to the state, for the use and benefit of the literary fund.

Penalty.

Millers exempted from service on juries and roads.

Sec. 18. Every keeper of a public mill shall be, and he is hereby exempted from serving on juries, and working on roads.

CHAPTER 66.

An act, concerning the appointment, duties and compensation of county surveyors.

Passed June 10, 1822.

County surveyors to be appointed.

Sec. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi, in general assembly convened,* That there shall be commissioned by the governor, on the recommendation of the county court of the respective counties within this state, a suitable person to hold the office of county surveyor, in each county, who shall reside in the county for which he is appointed, and shall before he enter on the duties of his office, produce his commission in the county court of his county, and in open court take the oath of office prescribed in the constitution,* and moreover shall give bond with good and sufficient security, to be approved by said court, in the penalty of two thousand dollars, payable to the governor of the state for the time being, and his successors in office, conditioned for the due and faithful performance of the duties of his office; which bond shall not be void on the first recovery, but may be put in suit and prosecuted by any party injured, until the whole penalty thereof be recovered.

Oath.

(*See chap. 55 sec. 3.)

Bond and security.

Their duties.

To be governed in mensurations by the English pole.

SEC. 2. It shall be the duty of the said surveyors, faithfully to execute all orders of survey directed to them, by any of the courts of this state, and to make all surveys of lands lying in the county of which he is surveyor, and to which the United States have no claim, at the request of the owners or proprietors thereof, and generally to do whatsoever in the re-surveying, mensuring and dividing of lands, may be required of him by any person wishing the same done; and in all his mensurations he shall use and be governed by the English perch or pole.

To re-survey, re-mark, and bound land.

To make a report and certificate.

Same to be recorded in clerk's office.

SEC. 3. It shall be the duty of each county surveyor, when ever called on for that purpose, to re-survey and re-mark, and bound any tract of land in his county, where the old marks are defaced, or are likely to decay and perish, taking special care in all such cases, to be governed by the original surveys, patents or title deeds of such tracts; and the said surveyors, respectively, shall make a plain report and certificate of all such re-marks and boundaries, as he may make as aforesaid, and deliver the same to the proprietor or owner of the lands so re-bounded, whose duty it shall be to have the same recorded in the clerk's office of the county wherein the land is situated, within three months thereafter, and the clerk's fee for recording the same, shall be one dollar.

Compensation of county surveyors.

SEC. 4. The following compensation shall be allowed, demanded and taken by county surveyors respectively, and no more, for services rendered by virtue of their offices, viz:

For each day's attendance in making any survey, five dollars; for every single plat, and calculating contents, with certificate of survey annexed, two dollars and fifty cents; for every adjoining plat with notes of reference, fifty cents; for every additional copy of a plat, with certificate of survey, and notes of reference, where there are not more than three plats contained in said copy, one dollar and fifty cents; for every additional plat in said survey, fifty cents; for surveying a town lot, and plat thereof, three dollars; for each adjoining lot, one dollar.

By whom to be paid.

SEC. 5. The fees chargeable by the county surveyors, as aforesaid, shall be paid by the party desiring the services to be performed, and when the services are rendered in obedience to an order of court, in a suit therein depending, the surveyor shall make out and state an account of his fees for such services, written in words at full length, on the back of one of the plats by him returned to the court, and the same shall be allowed in the bill of costs, to be taxed against the losing party, as other costs; but where it shall appear that the survey, or any part thereof, was made at the instance of the party cast in the suit, such and so much of the said fees shall not be taxed, as accrue on the work done by the surveyor for him.

Compensation of chain carriers and markers.

SEC. 6. Chain carriers and markers shall be allowed each one dollar per day for their services as such, to be paid in the same manner as is provided by this act for surveyors.

SEC. 7. Each county surveyor shall, and he is hereby authorised and required, to administer an oath or affirmation to each of his chain carriers, faithfully and diligently to perform his duty as chain carrier, without favor, affection, or partiality; and it shall be the duty of every county surveyor to write the name of each of his chain carriers on his plat.

County surveyor to administer oath to chain carriers.

Name of chain carriers to be written on the plat.

CHAPTER 67.

An act, providing for the appointment of inspectors of flour and other provisions, and of lumber, and for prescribing their powers, duties and compensation, in office.

Passed June 11, 1822.

SEC. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi in general assembly convened*, That when the county court of any county, or the government of any incorporated city or town, within this state shall deem it necessary, and certify the same to the governor, it shall be lawful for him, to appoint and commission one good and discreet citizen within such county or corporation, as inspector of flour and other provisions; whose duty it shall be carefully to inspect, according to law, all flour and other provisions that may be sold, held or offered for sale, within such county or corporation, and affix to the vessels or envelope containing the same, such legible public marks or brands, as will enable the purchaser or purchasers to distinguish the quality thereof at first view; he shall carefully and honestly guage and inspect the quantity and quality of all vinous and spiritous liquors over the quantity of twenty-five gallons, that may be sold, held or offered for sale within such county or corporation, and affix to the vessel or vessels containing the same, such legible and durable marks, as will enable the purchaser or purchasers, at first view, to ascertain the capacity of such vessel or vessels, and as near as may be the quality of the liquor therein contained: he shall measure and inspect all cord-wood, fire wood, planks, scantling, timber and lumber sold, held or offered for sale, when the order of any county court of his county, or the ordinance of his corporation, (as the case may be) shall require and direct the same; he shall be keeper of the standard of weights and measures within his county or corporation; he shall be clerk of the market within any corporation that may request his appointment, and shall do and perform the duties thereof according to law and the ordinances of such corporation; he shall be inspector of all weights and measures within the county or corporation for which he is appointed; and the fees or other compensation of such inspector, shall be ascertained and regulated, from time to time, by the county court of the county, or the government of the corporation, for which he may have been appointed, as herein after directed.

Inspector how and when appointed.

To inspect flour and other provisions.

To inspect and guage spiritous liquors.

To measure and inspect wood and lumber.

To be clerk of the market.

To be inspector of weights and measures.

Fees to be regulated by the county court or government of the corporation.

SEC. 2. Every such inspector shall, before he enters on the duties of his office, take and subscribe the following oath or af-

His oath.

firmation, before any magistrate of his county or corporation, which oath or affirmation shall be certified by such magistrate on his commission, and recorded in the office of the clerk of the county court, or of the corporation for which he may be appointed, to wit: "I, A. B. do swear (or affirm) that as inspector of flour and other provisions for the ——, I will not knowingly or wilfully injure any person or persons, or suffer any injury to be done by others with my knowledge or consent; I will, at all times and in all things, well and truly perform all the duties of inspector of flour and other provisions for the ——, according to law, to the best of my abilities, without fraud, favor or partiality: so help me God." And any person so appointed, commissioned and qualified, as inspector, shall be capable to do, and perform all and singular the duties of inspector of flour and other provisions, according to law, within the county or corporation for which he may be appointed, and may demand, recover and receive, all such fees, perquisites, and emoluments of office, for his services, as may be allowed him by law, the order of any county court, or the ordinances of any corporation, for which he may be appointed; and any inspector who shall commit any imposition or extortion, or shall be guilty of any wilful fraud, omission or neglect of duty, or any malfeasance as inspector, not particularly defined by this act, and be convicted thereof, on the evidence of any two credible witnesses, shall forfeit and pay two hundred dollars, to be recovered, with costs, for the use of the county or corporation for which he was appointed, in any court of competent jurisdiction, and be thereafter forever disqualified to hold any office of honor or profit within this state.

Penalty for extortion, fraud, neglect of duty or any malfeasance as inspector.

Penalty for opposing or hindering inspector in his official duties.

Sec. 3. Any person who shall let, hinder, molest, oppose or wilfully obstruct, or cause any let, hinderance, molestation, opposition or wilful obstruction, to any inspector appointed, commissioned and qualified by virtue of this act, in any of his official duties as inspector, shall, for every such offence, forfeit and pay two hundred dollars, to be recovered and applied in manner aforesaid; and shall, moreover, be liable to an action for any injury or damage that may be sustained by any snch let, hinderance, molestation, opposition or wilful obstruction.

Action for damages.

Penalty for selling or offering for sale a barrel of flour containing less than one hundied and ninety six pounds of net flour.

Sec. 4. Any person or persons who shall sell, hold or offer for sale, within this state, any barrel or barrels of flour that shall weigh or contain less than one hundred and ninety-six pounds of net flour, shall, for every such offence, forfeit and pay at the rate of twenty cents per pound, for any less quantity than ten pounds that each and every barrel so sold, held or offered for sale, may be difficient, with costs; and if any barrel of flour, sold, held or offered for sale, shall weigh and contain ten or more pounds less than one hundred and ninety six pounds of net flour, the whole of such barrel or barrels, so found deficient, shall be forfeited to the use of the poor of the county where the same may have been sold, held or offered for sale.

Or ten pounds less than one hundred and ninety-six.

Sec. 5. If any person or persons shall sell, hold or offer for sale, within this state, any barrel or barrels of beef or pork, that shall weigh and contain any less quantity than two hundred pounds of net meat, freed from unnecessary brine and salt, shall forfeit and pay for every such offence, at the rate of twenty-five cents per pound for any less quantity than ten pounds, that any such barrel or barrels may be found deficient; and any barrel or barrels which may be sold, held or offerred for sale, that shall each weigh and contain ten or more pounds less than two hundred pounds of net meat, freed from unnecessary salt and brine, shall be forfeited for the use of the poor of the county where the same was sold, held or offered for sale: *Provided always*, That wherever any inspector is present, he shall judge of the weight of the barrel, or tare that ought to be allowed on beef, pork and flour; but where no inspector is appointed, the barrel or barrels shall be weighed in the presence of the prosecutor and defendant: *And provided also*, That the forfeitures which shall accrue to the poor by the provisions of this act, shall be paid into the county treasury of the proper county.

Penalty for selling or offering for sale a barrel of beef or pork containing less than two hundred pounds of net meat.

Or ten pounds less than two hundred.

Provision as to tare.

Forfeitures where paid

Sec 6. If any person or persons, who shall knowingly, and wilfully sell, hold or offer for sale, within this state, any tainted, putrid, unsound, unwholesome or unmerchantable flour, having the end, sides or other part of any barrel or barrels containing the same, marked with letters or words expressing or meaning sound, good flour, or who shall practice any fraud or deception to put off or sell any damaged, unsound or unmerchantable provisions, shall forfeit the whole of such flour or other provisions, to the use of the poor of the county where the same may have been sold, held or offered for sale: *Provided*, That nothing herein contained shall be construed to affect any flour, or other provisions, wrecked, descending or ascending any navigable waters connected with the commerce of this state.

Penalty for fraudulently selling unmerchantable provisions.

Provision as to flour, &c. wrecked on navigable waters.

Sec. 7. Whenever any inspector of flour and other provisions shall be appointed, commissioned and qualified for any county or corporation within this state, by virtue of this act, it shall be, and it is hereby made the duty of such inspector, to procure as soon as practicable, at the expense of the county or corporation for which he may have been appointed, and to be by him kept at the most public market place in such county or corporation, a complete set of weights and measures, to correspond in quality, quantity and number, with the state standard of weights and measures, now in possession of the keepers of weights and measures, with suitable weighing and measuring implements, one set of scales and weights, and one accurate guaging rod, or other machine or implement for guaging and ascertaining, upon scientific principles, the quality of spiritous liquors; on all which weights and measures, and weighing and measuring implements, the name of the county or corporation to which they respectively belong, shall be durably and legibly engraved, stamped or painted, with the date of the year in which they

Inspector to procure a set of weights and measures at the expense of the county or corporation.

Keep the same at the most public market place

Also guaging instruments.

Name of the county or corporation to be

marked on such weights and measures.

To be the standard of weights and measures.

Inspector to make known by advertisement when such weights and measures are obtained.

To seal such weights and measures as correspond with the standard.

have been obtained; and the same, when procured, tested and marked as aforesaid, shall be the standard of weights and measures for such county or corporation, until congress shall fix a standard of weights and measures for the United States; and immediately after the obtainment of such standard of weights and measures, it shall be the duty of such inspector to make the same known by public advertisement, put up at six of the most public places in such county or corporation, and by three insertions in the nearest and most convenient newspaper published in the state; and any person or persons desirous of trying his, her or their weights and measures, may resort to such county or corporation standard, and if found, or made to correspond therewith, the inspector shall forthwith stamp or seal the same in some legible and durable manner, so as to make the same easily distinguished from such as have not been tested by the standard, and give the owner thereof a certificate, descriptive of such weights and measures so tested.

Penalty for keeping, or selling by weights and measures not correspondent with the standard.

SEC. 8. Thirty days after the publication required by the preceding section, if any person or persons shall sell any article of provision, or other article or commodity whatever, within any county or corporation where such standard of weights and measures have been obtained agreeably to the provisions of this act, not correspondent to such county or corporation standard, or shall keep any weights and measures, or other implements for weighing and measuring, for the purpose of buying or selling thereby, not correspondent with the county or corporation standard aforesaid, shall, for every such offence, forfeit and pay twenty dollars, one half to the prosecutor, and the other half to the poor of the county where the offence was committed.

County or corporation responsible to the inspector for the first cost of the weights and measures.

SEC. 9. Any county or corporation, having made application to the governor, according to the provisions of this act, for the appointment of an inspector of flour and other provisions, shall be, and such county or corporation is hereby made liable and responsible to the person who may be appointed, commissioned and qualified, as inspector of flour and other provisions for such county or corporation, for the first cost and charges of the weights and measures, and weighing and measuring implements, which he is required by this act, to procure in behalf and on account of such county or corporation.

Inspector to enter into bond with security before he shall use the weights and measures.

SEC. 10. Before any inspector shall use any weights and measures and weighing and measuring implements, he shall enter into bond, with three substantial freeholders as securities, to be approved of by the county court of the county, or by the corporation to which they may belong, in treble the amount of the first cost and charges of such weights and measures and weighing and measuring implements, payable to the presiding justice of the county court, or to the corporation, (as the case may be,) conditioned for the safe keeping, the honest and lawful application of the same, and in case of the death, resignation, or removal, from office, for the same, and punctual delivery of them, to the clerk of the county court of the county, or the clerk of the corporation to which they may belong; which bond, with a schedule of the weights and measures and weighing and measuring implements, signed by the inspector, and the original bill or bills of the first cost and charges of the same, shall be filed in the office of the clerk of the county court of the county, or in the office of the clerk of the corporation for which he may have been appointed. And any inspector who shall, by neglect, omission, or other cause, (fire excepted,) be at any time, when the same shall be required, deficient in any one article of such weights and measures and weighing and measuring implements, shall forfeit and pay four fold the amount of the first cost and charges of the article or articles that may be found deficient or defective, and moreover, shall furnish or repair such article or articles, at his own proper expense, within thirty days after conviction, or forfeit his commission as inspector.

Bond, schedule of weights and measures, &c. to be filed in the office of the clerk of the county court, or corporation.

Penalty on inspector for being deficient in any article of weights and measures.

Sec. 11. If any inspector of flour and other provisions, appointed within this state, shall, directly or indirectly, demand and receive any other or greater fee, perquisite, reward, or other compensation whatever, for any service or duty he shall perform as inspector, than what shall be allowed him by law, the regulation and order of the county court of his county, or the ordinance of his corporation, (as the case may be,) for the first offence, shall forfeit and pay twenty dollars, one half to the county, and the other half to the person who will sue for the same; and for the second offence he shall forfeit his commission as inspector.

Penalty for demanding and receiving more than legal fees.

Sec. 12. It shall be the duty of the county court of every county where an inspector shall be appointed and commissioned as aforesaid, at the next term of such court after the appointment of an inspector for such county, to fix and regulate the fees or other compensation of the said inspector; and said court shall have power and authority, from time to time, to alter, regulate and fix the fees or other compensation of such inspector, in such manner as may seem just and proper. And it shall be the duty of the clerk of such court, to record on the minutes of the court, the fees or other compensation that may be allowed the inspector of flour and other provisions for such county, and make the same public on the court-house door, and by three insertions in the nearest and most convenient newspaper. And it shall be the duty of any corporation for which an inspector shall be appointed and commissioned according to the provisions of this act, to ascertain and fix the fees or other compensation of such inspector, by ordinance made public in the usual way, within ten days after he shall have been appointed.

County court, where inspector is appointed, to regulate his fees.

Clerk to record the fees and make the same public.

Corporation for which inspector is appointed to fix his fees.

Sec. 13. The fines and forfeitures prescribed by this act, shall be recoverable by action of debt, before any justice of the peace,

Fines and forfeitures, how recoverable.

or any court having jurisdiction thereof, by any person who shall sue for the same, for the uses and purposes herein before provided.

CHAPTER 68.

An act, establishing weights and measures in the Mississippi territory.

Passed February 4, 1807.

One set of weights and measures to be procured for a general standard.

SEC. 1. *Be it enacted by the legislative council and house of representatives of the Mississippi territory in general assembly convened*, That the treasurer of the territory be, and he is hereby authorised and required to procure, as soon as may be, at the public expense, one set of weights and measures, viz.—one weight of fifty pounds, one of twenty five, one of fourteen, two of six, two of four, two of two, and two of one pound avoirdupois weight, according to the standard of the United States, if one be established, but if there be none such, according to the standard of London; with proper scales for weights, together with measures, one of the length of one foot, and one of one yard, cloth measure; and the measures of one half bushel, one peck and one half peck, dry measure; also the measures of one gallon, one of half a gallon, one of one quart, one of one pint, one of half a pint, and one of one gill, wine measure, according to the above named standard; and the said weights, measures and scales, shall be deposited with the said treasurer, to serve as a general standard for weights and measures within this territory, until otherwise directed by congress.

One set to be made or procured for each county, and compared with the general standard.

SEC. 2. When the aforesaid weights, measures and scales, shall be provided as aforesaid, the treasurer shall cause to be made or procured for each county within this territory, at the public expense, one set of weights, scales and measures; and the last mentioned weights and measures shall be compared by the said treasurer, with the aforesaid general standard, and when found to agree therewith, shall be forthwith transmitted by him to the clerks of the several county courts in this territory.

County court to appoint a person in each county to keep weights and measures.

His oath.

Clerk to make his appointment known by advertisement.

SEC. 3. The said weights, measures and scales, shall be kept by such person in each county, as the county court shall direct, who shall take the following oath, viz: "I, A. B. do solemnly swear, or affirm, as the case may be, that I will in all things act with justice and faithfulness in my appointment as keeper of the standard of weights and measures, for the county of , according to law, to the best of my skill and judgment. So help me God." And immediately after such appointment, the clerks of the several county courts shall make known the same by advertisement, to be fixed at the door of their court houses, and also by inserting the same in one of the public gazettes of this territory. And all persons desirous of trying their weights and measures, may resort to the aforesaid county standard for that purpose; and if they are found true, the person appointed to keep the said standard, shall seal them with a seal, to be provided by the county court, at the expense of the county; and the persons appointed in the several counties, to keep the said county standard, shall be entitled to receive for trying every steel-yard, and giving certificate therefor, and for trying any other weights and measures, and sealing the same, fifty cents each, to be paid by the person for whom such service is rendered or done.

Weights and measures found true by the county standard to be sealed

Compensation.

Sec. 4. Three months after the appointment of a person to keep the said county standard shall have been made as aforesaid, every person or persons who shall sell any commodity whatever, by weight or measure that shall not correspond with the said county standard, or shall keep any such for the purpose of buying or selling with; shall for every such offence, forfeit and pay the sum of ten dollars: recoverable before a justice of the peace, by any person who will sue for the same, and applied to his own use.

Penalty for selling by weight or measure not corresponding with the county standard.

Or keeping such for buying or selling.

Sec. 5. The territorial treasurer shall transmit to the clerks of the respective counties, the weights, scales and measures, as directed by the second section of this act, within twelve months from and after the passing hereof.

Time limited for transmitting weights and measures to the respective counties.

CHAPTER 69.

An act, concerning weights and measures.

Passed December 23, 1815.

Sec. 1. *Be it enacted by the legislative council and house of representatives of the Mississippi territory in general assembly convened*, That the treasurer of the territory be, and he is hereby authorised and required to procure as soon as may be, at the public expense, six sets of weights and measures as described in the act entitled "an act, establishing weights and measures in the Mississippi territory;" passed February 4th, 1807.

Six sets of weights and measures to be procured.

Sec. 2. When the sets of weights, measures and seals shall have been procured by the treasurer as authorised by this act, one set shall be conveyed at the public expense to Huntsville in Madison county; one other set to some place on or near Pearl river; one other set to the town of St. Stephens; one other set to the town of Mobile; one other set to the town of Woodville; and the sixth set to the town of Port Gibson; and be placed in the hands of some person to be appointed by the governor; and the sets of weights and measures heretofore procured shall be forthwith delivered to some person residing in the city of Natchez, to be appointed in the manner above described. And the

How to be distributed.

Keepers of weights and measures appointed.

To take oath.

keepers of weights and measures hereby authorised to be appointed, shall, previously to entering upon the discharge of their duties, take the oath or affirmation prescribed in the third section of the act above recited, and the said keepers shall immediately after their appointment, make known the same by advertisement to be fixed at the door of the court house of the counties in which they reside, and also by inserting the same in the nearest newspaper published in this territory. And immediately after the appointment of the said keepers, all persons residing in any part of this territory and desirous to try their weights and measures, may resort to any of the aforesaid standards for that purpose; and if they are found true, the keeper of any of the said standards shall seal them with a seal to be procured by the said treasurer at the expense of the territory; and the persons appointed keepers as aforesaid shall be entitled to receive the fees prescribed by the third section of the act above recited, for the services therein specified.

To make their appointment known by advertisement.

To seal weights and measures found true by standard.

Fees.

Penalty for selling by weights and measures not corresponding with the standard.

SEC. 3. Three months after public notice of the appointment of a person to keep the said standard in the city of Natchez, every person residing in any of the counties lying upon the Mississippi river, and that three months after public notice of the appointment of the other keepers of weights and measures hereby authorised to be made, every person residing in this territory, who shall sell any commodity whatever by weight or measure, that shall not correspond with the standard hereby established, shall for every such offence, forfeit and pay the sum of fifty dollars, recoverable before any justice of the quorum or of the peace to be paid to the county treasurer for county purposes.

Appropriation.

SEC. 4. The sum of four hundred dollars in addition to the eight hundred dollars heretofore appropriated for the purpose of procuring weights and measures, be, and the same is hereby appropriated for the purposes specified.

CHAPTER 70.

An act, concerning highways, ferries and bridges.

Passed June 29, 1822.

Appointment of commissioners.

SEC. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi, in general assembly convened,* That there shall be appointed, (if not already appointed) by the county courts of each county in this state, at the first or some subsequent term after the passage of this act, a commissioner for each captain's district in the different counties in this state, who when assembled in the manner herein directed, shall have, exercise and possess, the entire superintendence and control of roads, highways, ferries and bridges.

Time and place of meeting.

SEC. 2. Each board of commissioners so appointed, shall meet at the respective court houses of the different counties of this state, in each and every year, on the Mondays immediately preceding the Mondays on which the superior courts of the respective counties meet; and when so assembled, the said commissioners shall have power and authority, at any time, and at all times hereafter, to establish ferries, and to determine the tolls of the same; to order the laying out of roads when necessary; to appoint where bridges shall be made; to discontinue such roads as now are, or hereafter shall be made, as shall be found useless; and to alter roads, so as to make them more useful, as often as occasion shall require.

Their powers.

Presiding justice of the county court to be president of the board.

SEC. 3. The presiding justice of the county court of each county in this state, shall by virtue of his office be president of the board of commissioners; he shall preserve order at the meetings of the board, direct the proceedings to be recorded, have power to fine any person (not a member) for improper, disorderly, or contemptuous behaviour, in any sum not exceeding ten dollars, and with the concurrence of a majority of the board, may fine a member, in a like sum, or expel him.

Manner of filling vacancies.

SEC. 4. When the seat of any commissioner shall become vacated, the residue of the said board of commissioners, shall as early thereafter as convenient, elect another commissioner to supply such vacancy.

Majority to constitute a board.

SEC. 5. A majority of the whole number of the commissioners, appointed as aforesaid, shall constitute a board to transact business; but no road established according to law, shall be altered or changed, nor shall any new road be opened, without the concurrence of a majority of the whole number of the aforesaid commissioners.

President *pro tempore* when appointed.

SEC. 6. If the presiding justice of the county court shall fail to attend a meeting of the board of commissioners, the said board shall be, and are hereby authorised to elect a president *pro tempore.*

Board to appoint a clerk.

SEC. 7. Each board of commissioners, shall appoint a person of skill and probity as clerk of the said board, who shall hold his office during good behaviour; and it shall be the duty of said clerks, to attend on the regular meetings of the board; to keep a fair record of the proceedings of the board; to issue all necessary citations and orders, which he may be directed to issue, or which issue of course; and his office shall be under the direction of the board in term time, and of the presiding justice in vacation.

His duties.

Compensation of clerk.

SEC. 8. Each clerk of the board, shall receive in full compensation for his services, the sum of two dollars per day, for each and every day's attendance on the board; and likewise any sum which the board may think proper to allow him, not exceeding fifty dollars in any one year, for any one county, to be paid out of the county treasury of the county, to which he belongs.

Oath of commissioners.

SEC. 9. Any judge or justice of the peace shall administer an oath to the commissioners and clerk, faithfully to perform the duties of their respective offices; and such judge or justice shall give a certificate of the same, which shall be filed with the clerk.

Presiding justice of the county court may convene the members of the board.

SEC. 10. If the board of commissioners of any county in this state, shall fail to meet according to the directions of this act, the presiding justice of the county court of such county, is hereby authorised to convene the members of such board, by giving at least ten days notice of the time of such meeting, and he shall also possess the same power, whenever in his opinion a case of emergency may render a meeting necessary.

Each commissioner to make a statement of the situation of the roads in his district, &c.

SEC. 11. Each commissioner of the said board, shall before any other business is transacted, make a correct and true statement of the situation of all the roads in his district; of the number of days the hands belonging to each road, have worked on the same; the attention which has been paid thereto by the overseer of each road district; the amount of fines collected, and the application thereof; and the ability of the hands belonging to each road district to keep such road in repair, which said statement the clerk shall enter on the minutes of the board; and any commissioner who may fail to make such statement, or who may make an improper, incorrect or false statement, of the situation of the roads in his district, shall pay a fine of not less than twenty dollars, nor more than fifty, to be recovered before any court of competent jurisdiction, to be applied to the benefit of the road in the district to which the defaulting commissioner may belong.

Penalty on failure.

Clerk to deliver to the clerk of the circuit court a transcript of the minutes.

SEC. 12. It shall be the duty of the clerk of the board of commissioners, on or before the first day of the terms of each circuit court, to deliver to the clerk of the said circuit court, a certified transcript of the minutes of the said board of commissioners, so far as the same may relate to the returns made by each commissioner thereof; which said certified transcript, the said clerk of the circuit court, shall deliver to the attorney-general of the state, or district attorney, (as the case may be,) whose duty it shall be to lay the same before the grand jury of the county, with such explanations as the nature of the case may require, and the exhibition of such testimony, as he may have it in his power to adduce against all overseers, commissioners, and other persons who may have been remiss in the performance of their duty; and thereupon the said grand jury shall true presentment make of all offenders, against the provisions of this act; and it shall be the duty of the said circuit court, to issue a capias forthwith, against the body or bodies of the offender or offenders, and on their appearance to try the is-

Proceedings thereon.

sue, without any indictment or information being filed, and if the person presented be found guilty, or be in default, to award a fine of not less than twenty, nor more than one hundred dollars.

SEC. 13. If any commissioner shall fail to attend a regular meeting of the board, or refuse to act as a member thereof after a notification of his appointment, he shall pay a fine of not less than twenty, nor more than fifty dollars: *Provided, always*, That the said board shall have power to exonerate him from the payment of any fine, if they deem his excuse a sufficient one.

Penalty on commissioner failing to attend after notification of his appointment.

SEC. 14. Each board of commissioners shall have power and authority to frame all necessary by-laws and regulations for the government of such board, provided the same be not repugnant to the laws and constitution of this state, and of the United States.

Board may make by-laws.

SEC. 15. Each meeting of the board of the commissioners shall be held three days, if business continue so long, and no longer.

Meetings of board, how long held.

SEC. 16. The presiding justice of the county court, all commissioners of roads, clerks of the board, ministers of the gospel, keepers of public mills and ferries, all students in any colleges, academy or school, all post-masters, all teachers in colleges, academies or schools, shall be exempted from working on the public roads.

Persons exempted from working on roads.

SEC. 17. (*Repealed, January* 20, 1823. *See Chap.* 71. *Sec.* 2.)

SEC. 18. No person shall be compelled to serve as a commissioner of roads, more than two years in any period of six years.

Commissioners not compelled to serve but two years in six.

SEC. 19. The board of commissioners shall have power, and they are hereby required, to divide the public roads into precincts or districts, direct what persons shall work on each road, so that no person shall be compelled to work on more than one road, nor more than six days in one year, upon any such road.

Board to divide roads into districts.

SEC. 20. The said board of commissioners shall annually appoint overseers of the roads or highways, whose duty it shall be to give three days previous notice,* by summons in person, or in writing, left at their respective places of abode, to all free male persons, as well as to the owners or overseers of male slaves, from the age of sixteen years to fifty, residing within their respective precincts, except such persons as may be exempted from such service by law, to meet at such times and places as they may appoint, and to bring with them such tools to work with on the road, as they may direct. And if any free person so summoned, shall fail to attend, or send a

To appoint overseers.

Overseers to summon persons to work on the road.

(*See Chap 71 sec. 1.)

Penalty on failure to attend.

substitute to work in his place, or if any slave, so summoned, shall fail to attend accordingly, or when attending, shall neglect or refuse to do and perform his or their duty therein, he or they shall forfeit and pay a fine of two dollars per day, for every such failure, non-attendance, or refusal, to be recovered by warrant, from any justice of the peace, and paid by said justice, sheriff or constable, to the commissioner of the precinct, who shall expend the same in hiring other hands to work on said road; and in all cases, the return of the overseers of the road, shall be conclusive evidence against any person returned as a defaulter:* *Provided*, That when any fine forfeited under this act, shall exceed the sum of fifty dollars, the overseer shall make his return to the next circuit court of his proper county, which court shall take cognizance thereof, and determine the same as in other cases of debt: *And provided, also*, Where any fine assessed by a justice of the peace against any person under this act, shall exceed the sum of twenty dollars, an appeal shall be allowed to the county court, as in other cases, whose decision thereon shall be final.

How to be recovered and expended.

(*The provision which makes the return of the overseer *conclusive* evidence is repealed, see Chap. 71, sec. 5.)

Overseer to make a list of persons summoned, noting those that fail to attend.

SEC. 21. It shall be the duty of the overseer of the road to make a list of all free persons and slaves by him summoned to work on the road, and to note thereon, specifying the names of such free persons, and also the number of such slaves as may fail to attend without a reasonable excuse, together with the names of the owners or overseers of such slave or slaves, as may fail to attend and perform their duty; and within three days of such failure or non-attendance, deliver a copy thereof signed with his own hand, to some convenient justice of the peace, whose duty it shall be, and he is hereby required, to issue a warrant or summons against such free persons, and also, against the owners or overseers of such slaves, for the fine or fines incurred, by this act, for such failure or non-attendance.

To deliver a copy to a justice of the peace.

Such justice to return a list of delinquents and of warrants issued, to the commissioner of his district.

SEC. 22. It shall be the duty of such justice, to make a correct return of such list or lists of delinquents, and of the warrants or summonses by him issued to the commissioner of his district, who shall lay the same before the board of commissioners, for their information, and to enable them to inquire as to the collection and due application of the fines so incurred and collected.

Overseer may lay off the road into equal divisions.

SEC 23. It shall and may be lawful for any overseer, if required by a majority of the workmen on the road assigned him, to lay off such road into equal divisions, for the ease of the laborers, who shall finish his or their parts within the time agreed on between him and each free person, master, mistress or overseer, and in default of any such agreeing party, the overseer is hereby authorised to cause such part to be finished by the hire of other persons to do the same, and thereon to tender his account and demand payment, and on refusal, to warrant for the same, and recover the money for his own use; provided the time agreed on shall not exceed ten days.

Penalty on overseers for neglect of duty.

SEC. 24. All overseers of roads who shall refuse or neglect to do their duty, as is by this act directed, or who shall not keep the roads and bridges clear and in good repair; or let them remain uncleared or out of repair, for and during the space of fifteen days, unless hindered by extreme bad weather, or other sufficient cause, to be adjudged of by the justice of the peace, such overseer shall forfeit, for every such offence, the sum of ten dollars, over and above such damages as may be sustained, to be recovered by warrant or summons, before any justice of the peace.

Overseer to demand of each person a list of hands he may have liable to work on roads.

(*Oath to be administered by overseer. See Chap. 71, sec. 3.)

Penalty for refusing or neglecting to give list.

SEC. 25. It shall be the duty of every overseer of the road, immediately after his appointment, to demand a list of every person within his district, of all the hands he may have liable to work on roads; which list shall be rendered on oath, to be administered *by any justice of the peace*;* which demand shall be made personally, or in writing, left at the usual place of abode of the person applied to: and if any person shall refuse or neglect for the space of ten days, to deliver a list thus required, to said overseer, such person so refusing or neglecting, shall forfeit and pay the sum of six dollars for each hand liable to work, so refused or neglected to be given in or returned; which sum or sums may be recovered before any justice of the peace or court of record having jurisdiction thereof; which said sum or sums, shall, under the direction of the commissioner of the district, be applied to the repairs of the road or roads within the district.

Roads to be measured and mile posts erected.

Penalty.

SEC. 26. It shall be the duty of all overseers of roads, within six months after their appointment, or after the passage of this act, to cause to be measured, the roads of which they have the superintendence (if not already measured) and to erect, (if not already erected) a post of durable material at the termination of each mile; marking thereon in large roman characters, the number of miles from the court-house or principal towns of their respective counties; and every overseer of a road failing herein, shall forfeit and pay the sum of five dollars, recoverable before any justice of the peace of the proper county, and applied, under the direction of the commissioner of the district, to the use of the roads in the district where the default may have occurred; and every overseer of a road, who shall neglect to replace such post as shall have been destroyed by accident, or natural decay, at the regular time appointed for working on said roads, shall forfeit and pay the sum of two dollars for each post thus neglected to be replaced, to be recovered and applied as aforesaid.

Posts to be erected at the intersection of

SEC. 27. The overseers of roads in their respective precincts, shall, within the time before mentioned, cause posts to be erect-roads, with boards and index hands.

Penalty for injuring such posts, &c.

Penalty on overseer for neglecting to erect or keep index boards in repair.

ed, when trees are not convenient, at the intersection of all public roads, with boards and index hands, pointing in the direc- of such roads, on which shall be inscribed in legible characters, the name of the town or place to which they severally lead, and the distance to the same in computed miles; and any person or persons who shall wilfully injure, deface or destroy any such posts or index boards, shall, on conviction thereof, forfeit and pay the sum of ten dollars, to be recovered as in the preceding section of this act, one half thereof to be paid to the informer and the other half thereof to the overseer of the road, or commissioner of the district, to be expended in repairing the road or roads in the precinct, where the injury has been sustained; and every overseer of the road who shall neglect or refuse to put up and keep in complete repair, the index boards directed in this section, shall forfeit and pay five dollars, recoverable as aforesaid, to be expended under the direction of the commissioner of the district, in keeping in repair the highways in the precinct where the default shall have occurred.

Overseer to employ a person to paint signs to be put up at each mile post

SEC. 28. The overseers of roads shall be authorised to employ a suitable person, to prepare and paint the signs to be put up at each mile post, and pay the same out of any fines which may accrue; and in case there be no fines, the county court is hereby required to order the same paid out of the funds of the county.

To return to the board or commissioner of his district, the situation of the road and number of defaulting hands.

Penalty on failure.

SEC. 29. Every overseer of a road shall, on or before the first meeting of the board of commissioners, after the expiration of his appointment, make a written return on oath, either to the said board, or to the commissioner of his district, of the situation of the road whereon he has been overseer; the number of defaulting hands in work, particularly specifying the names of free persons; and every overseer failing to make such return, shall forfeit and pay the sum of fifty dollars, recoverable before a justice of the peace, and applied under the direction of the commissioner of the district, in repairing of the roads, causeways or bridges.

Roads to be laid out by a jury.

Their oath.

SEC. 30. All roads hereafter to be laid out, shall be laid out by a jury of freeholders, to be appointed by the aforesaid board of commissioners, consisting of seven persons, to the greatest advantage of the inhabitants, and as little as may be to the prejudice of enclosures. And it shall be the duty of the board of commissioners, on the appointment of such jury, to designate the time and place of their meeting; it shall be the duty of the commissioner of the district to attend and administer to the jury the following oath or affirmation, viz: "You and each of you, do solemnly swear that you will lay out the road now directed to be laid out, by the board of commissioners, to the greatest advantage to the inhabitants, and with as little prejudice to enclosures as may be, without favor, affection, malice or hatred, to the best of your skill and knowledge: So help you God." And it shall be the duty of the said jury to assess the damages which private persons may sustain by such road, if the party or parties through whose land it may run, shall make due application therefor, at the time of laying off the said road; and it shall be the duty of the said commissioner to return the verdict of the jury to the clerk of the board of commissioners, before the next meeting of the said board, under a penalty of ten dollars, and the assessment of damages, (if any be made) shall be paid out of the treasury of such county on the order of the board of commissioners, certifying that the party is entitled thereto: *Provided however*, That if any person whose premises may be injured by the laying out of any new road shall be dissatisfied with the assessment of damages by the said jury, he, she or they may appeal to the board of commissioners of said county, who, at their next meeting thereafter, shall make the assessment *de novo*, which shall be conclusive.

Assessment of damages.

Persons dissatisfid may appeal to the board.

SEC. 31. All roads so laid out shall be deemed public roads, and shall be at least twenty feet wide. And where to the overseers of roads, it may appear expedient to make or repair causeways, on the same roads, they shall be at least sixteen feet wide; and the earth necessary to raise and cover the said causeways, shall be taken from each side of the causeway, so as to form a drain on each side of the said causeway; and the overseers of roads are hereby directed to have completely cut, all roots, trees and stumps, not exceeding six inches above the ground, and pared round the edges, in the roads under their care; and all bridges hereafter directed to be made over small creeks or runs, shall be sixteen feet wide.

Width of roads, causeways and bridges.

SEC. 32. Where a bridge shall be necessary over any place where the overseer with his hands cannot conveniently make it, the board of commissioners shall be, and are hereby empowered and required to contract and agree for the building, keeping and repairing thereof, and to lay the charge on their county. And when bridges shall be necessary, over any such creek or river, which divides one county from another, the board of commissioners of each county, shall join in this agreement, for building, keeping, and repairing the same; and the charge thereof shall be defrayed by both counties, in proportion to the number of taxables in each.

When the board shall contract for the building of bridges.

Contract and expenses for the erection of bridges over creeks which divide counties.

SEC. 33. All and every contract, agreement, and order of the board of commissioners, of any of the counties in this state, entered into, or made for, or concerning the building, keeping or repairing of bridges, in such manner as to them shall seem most proper, shall be good against them and their successors.

Contracts for building of bridges, good against the board and their successors.

SEC. 34. The board of commissioners, through whose counties run large water courses or creeks, which from the rapidity

Board may contract for building toll bridges.

of the water and the width of the stream, may be too burthensome to build bridges and keep them in repair by a tax on the inhabitants, shall be, and they are hereby authorised, if they deem it necessary, to contract with builders, to build toll bridges, or extensive causeways: for each of which, each board of commissioners are hereby authorised and required to lay the toll to be placed on all persons, horses, carriages, and cattle, passing over the same: and the revenue arising from which, for such a number of years as the said board of commissioners may agree upon, to be granted unto the builders of such bridges, their heirs and successors, for the time agreed on, on the payment of such annual revenue to the county, as the board of commissioners may direct. And it shall be the duty of the undertaker or undertakers to keep such bridge or causeway in constant repair, at his, her or their own expense; in default of which, he, she or they are hereby declared to forfeit all right and title to the toll allowed by the said board of commissioners.

To fix the rate of toll.

Revenue arising from toll

Overseer to order out hands to repair bridges and causeways

SEC. 35. If any bridge or causeway, on any public road, be at any time so damaged, by high waters, (or otherwise,) as to render it dangerous for travellers to go over the same, it shall be the duty of the overseer of the road for the district in which such bridge or causeway may be situated, to order out the working hands allotted to his district, or so many of them as may be necessary to repair the same immediately, even although they shall have previously worked six days on the public highways. And if any overseer shall neglect so to do, it shall be the duty of the commissioner of the district, in which the same may be situated, or any person after five days notice to such overseer, personally, or having left the same, in writing at his usual place of abode, to hire proper and sufficient workmen, to repair such bridge or causeway. And all reasonable charge for such repair, shall be paid by such overseer to the commissioner or person employing such workmen, with twenty per cent. per annum for his trouble, to be recovered if under fifty dollars, before any justice of the peace, or if above it, any court of competent jurisdiction.

Mode of proceeding in case of neglect.

Penalty for felling trees &c. into the highway.

SEC. 36. If any person shall fell a tree or bush into any public highway, and shall not remove and clear away the same within twenty-four hours, or shall kill or gird a tree within the distance of fifty feet of the out edge of any public road, and shall not remove and clear away the same within twenty-four hours, except within an enclosure, it shall be deemed a nuisance. And every freeman of full age, so offending, or the parent, master, or owner of every child, apprentice, servant or slave so offending, shall forfeit and pay one dollar for every such offence; and when any fence shall be made across any public road, the owner or tenant of the land shall pay two dollars for every twenty-four hours the same shall be continued.

Penalty for refusing to serve as overseer.

SEC. 37. If any person shall refuse to serve on any road as an overseer, agreeably to the order of the board of commissioners of the county in which he resides, he shall forfeit and pay the sum of forty dollars, recoverable with costs of suit before any court having jurisdiction of the same. And the said person shall notify the commissioner of the district of his acceptance or refusal to act, within fifteen days after he receives his appointment to the said office, under the penalty of ten dollars, to be recovered with costs of suit, before any justice of the peace in the county where the offence was committed; and to be collected and applied as other forfeitures under this act: and the commissioner upon receiving such notice, shall, and he is hereby authorised and required to appoint a successor to serve for the residue of the term. And such new overseer so appointed, shall be subject to the same penalties and forfeitures as the overseer appointed by the board of commissioners; and the fines shall be recovered and applied in the same manner: *Provided*, That no person shall be compelled to serve as an overseer of a road in any county more than one year in three.

Person appointed shall give notice of his acceptance or refusal to act.

Penalty.

Not compelled to serve more than one year in three.

SEC. 38. The clerk of the board of commissioners shall, within ten days after the appointment of any overseer of a road, deliver a copy of the order to the sheriff of the county, under the penalty of five dollars; and the sheriff, within ten days after the receipt of such order, shall deliver the same to the overseer, under a penalty of five dollars. And each clerk shall moreover, once in every year fix up in his court-house, a list of the names and precincts of all the overseers of roads in his county, under the penalty of ten dollars for every neglect.

Copy of the order for his appointment to be delivered to overseer.

List of overseers to be fixed up in the courthouse.

SEC. 39. If any person or persons shall erect or cause to be erected, across any public road any bar or impediment whatever, he, she or they shall be liable to pay the commissioner of the district in which the offence may be committed, or to any other person who may sue for the same, the sum of two dollars; to be recovered before any justice of the peace, to the use of the commissioner of the district, or any other person who may sue for the same: *Provided always*, That no toll gate, nor any toll bridges shall be considered as liable to the fine hereby imposed. And no person shall turn, alter or change any public road, unless it be by order of the board of commissioners, founded upon the report of a jury, appointed and sworn as in the case of laying out new roads, under the penalty of ten dollars for each month such road is turned out of the old course, without an order of the board of commissioners; to be recovered on a warrant before any justice of the peace, by the commissioner of the district or any other person who may sue for the same. And that the old road shall in no case be shut up until the overseer shall certify to the board of commissioners, or the commissioner of the district in which he resides, that the new and opened road is in good and sufficient repair.

Penalty for erecting any impediment across the road.

Proviso.

Penalty for turning the road.

Board to compel owners of ferries and bridges receiving toll to give bond.

Person sustaining damages may bring action on the bond.

Penalty on ferryman for neglect of duty.

SEC. 40. The board of commissioners of each and every county in this state, shall have full power and authority, and they are hereby directed and required, to compel all persons who now are or hereafter shall be authorised to keep a public ferry, or who shall own a bridge, receiving toll within the said counties, to give good and sufficient security in the sum of five hundred dollars; payable to the presiding justice of the county court, and his successors in office, with condition, that he or they shall and will constantly find, provide and keep good and sufficient boats, or other proper crafts, and keep such bridges in good repair, also the banks on each side of the water courses, as the case may be, and always to be well attended for travellers or other persons to carry or pass their horses, carriages and effects over any river or creek, or over any such toll bridge. And if any person shall sustain damage by any ferryman or keeper of a toll bridge not having complied with the condition of his bond, the person sustaining such damage may bring an action of debt against such ferryman or bridge keeper, on such bond in the name of the said presiding justice, and recover for non-performance of the said condition, so much damage as he, she or they shall appear to have sustained, and thereupon take out execution for whatever shall be so recovered, and apply the same to his, her or their own use. And it shall and may be lawful for any person, detained at any public ferry by reason of such ferryman not having sufficient boats, or other proper crafts, and hands, or by neglecting to do his duty, by a warrant from a justice of the peace, to recover of such ferryman the sum of ten dollars for every default or neglect: *Provided*, That any such recovery shall not be deemed to bar any action for personal damages, sustained by any person or persons, by reason of the insufficiency of the said ferries and boats thereat and bridges.

Timber for making bridges and causeways.

SEC. 41. When it may be needful and necessary for making a bridge or causeway, or for repairing the same, it shall and may be lawful for each and every overseer of roads to enter on the lands of any proprietor adjoining or near to such bridge or causeway, and to cut and take away timber sufficient for making or repairing such bridge or causeway.

Toll of ferries subject to the regulation of the board.

SEC. 42. The toll of any ferry that may or shall be kept at any place where a public road leads to the same, shall at all times be subject to the regulation and control of the board of commissioners of the county in which the same may be kept. And every keeper of such ferry who may or shall presume to charge or demand more than what the board of commissioners may have allowed, shall forfeit and pay for every such offence the sum of ten dollars, to be recovered before any justice of the peace of the said county, by the commissioner of the district or any other person who may sue for the same.

Penalty for demanding more than is allowed.

SEC. 43. If the owner or owners of the soil, where any public ferry now is or may be hereafter established, shall refuse or neglect until the expiration of the next regular meeting of the board of commissioners, from and after the establishment of said ferry, to give bond and security according to the provisions of this act, then and in that case it shall be lawful for the said board of commissioners, and they are hereby authorised and required, to let out the keeping of the said ferry or ferries to any person or persons who will engage to keep the same for the tolls and rates fixed by the aforesaid board of commissioners; the person or persons so engaging to keep the said ferries, to give bond and security according to law in such cases made and provided.

cording to this act, the board to let out ferry.

Sec. 44. In all cases where the board of commissioners of any county shall intend to let out the keeping of any public ferry, they shall first give the refusal thereof at the end of every two years to the owner of the soil at which the said ferry is established; and if he, she or they so owning the soil as aforesaid, shall and will give bond and security as required by the provisions of this act, for the keeping good and sufficient boats for the passing over all travellers and other persons crossing at the same, then and in that case the said ferry shall in all cases be let out to the owner or owners of the soil as aforesaid; but if the owner or owners of the soil at which such ferry is established, shall refuse to take the same as directed by law, the said board of commissioners shall and may have power to let out the keeping of the same to such other person or persons as they may think proper.

Owners of the soil to have the refusal at the end of every two years.

Sec. 45. It shall not be lawful for any master of a vessel or other person to obstruct, or cause to be obstructed, any of the channels or passes in any of the navigable bays, rivers, or creeks in this state, by throwing or putting, or causing to be thrown or put, any ballast, tree or other impediment into the said channels or passes, or in any other manner whatever, obstruct the free navigation thereof: the person or persons so offending, shall be fined in a sum not less than fifty dollars, nor more than two hundred dollars, to be assessed by a jury.

Penalty for obstructing navigable rivers &c

Sec. 46. All fines and forfeitures arising or accruing under this act, shall be paid over to the county treasurer of the county in which the same may be collected, except when the application of the same has been otherwise specially directed: which fines and forfeitures shall be appropriated by the board of commissioners of such county in repairing or building such causeways or bridges in the said counties, as they may think proper.

Fines how paid and appropriated.

Sec. 47. That all roads at present existing in this state and which have been laid off by the order of any county court within the same, shall be deemed and taken as public roads, until otherwise ordered by the board of commissioners authorised by this act.

Roads now existing deemed public.

Corporations not affected by this act.

SEC. 48. The provisions of this act shall not be construed so as to affect the rights and privileges of any corporate body at present existing in this state.

Sheriff to attend meetings of the board.

SEC. 49. It shall be the duty of the sheriff of each county, by himself or deputy, to attend the meetings of the commissioners of roads in his county, and execute all orders of said board: for which he shall receive the sum of two dollars per day, for the service rendered, payable out of the county treasury of the proper county.

CHAPTER 71.

An act, to amend an act entitled "An act concerning highways, ferries and bridges."

Passed January 20, 1823.

Overseer of road may appoint a person to warn hands liable to work on road.

SEC. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi in general assembly convened*, That the overseer of each and every road within this state, for the time being, be, and he is hereby, authorised to appoint one white male person, liable to work on the road, by giving him notice in writing, together with a complete list of all hands liable to work on the road within his road district, at least ten days before the time of working on the road, whose duty it shall be to warn all the hands within the overseer's road district, in the same manner, and under the same penalties, as the several overseers are by law directed to do; and it shall be his duty to return the said list, upon oath, to the overseer, designating the hands warned, under the penalty of ten dollars, to be recovered before a justice of the peace, and to be accounted for, and applied, as other fines and penalties are directed by the act to which this is an amendment; and the person appointed by the overseer to warn the hands, and doing his duty, shall be exempt from working on the road for that time.

Seventeenth section of original act repealed.

SEC. 2. The seventeenth section of the act to which this is an amendment be, and the same is hereby repealed.

Overseer may administer oath required by the twentyfifth section of original act.

SEC. 3. The overseers of roads shall have power to administer the oath required by the twenty-fifth section of the act to which this is an amendment, and so much of said section as compels owners of hands to make the returns, to overseers on oath, taken before some justice of the peace, be and the same is hereby, repealed.

Swinging gates may be erected across public roads in certain cases.

Proviso.

SEC. 4. All persons on whose land public roads cross large water-courses, it may be lawful to erect swinging gates across said public roads, any law, custom or usage to the contrary notwithstanding: *Provided*, This section shall apply and be in force only in that part of this state east of Pearl river.

Repealing clause.

SEC. 5. So much of the twentieth section of an act entitled "an act concerning highways, ferries and bridges," as makes the overseer's return of defaulters conclusive evidence, be, and the same is hereby, repealed.

CHAPTER 72.

An act, to reduce into one, the several acts regulating inns, taverns, and houses of private entertainment; and for the restraint of tippling houses.

Passed June 29, 1822.

County court may grant license to keep tavern.

SEC. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi, in general assembly convened*, That the county courts in and for the respective counties in this state, are hereby authorised to grant licenses to persons to keep inns and taverns, to exhibit and sell victuals, vinous, spirituous, and other strong liquors, for the accommodation of persons; and provender and other sustenance for horses and cattle, within their respective counties, in the manner prescribed by this act, and not otherwise.

No person to be licensed unless recommended by six freeholders.

Proviso.

SEC. 2. No person or persons shall be licensed to keep an inn and tavern, but such as shall be recommended for that purpose, by at least six respectable freeholders of the town, village, or neighborhood, in which such inn and tavern is proposed to be kept: *Provided*, That where such application shall be made, and the requisite number of freeholders do not reside in the town, village or neighborhood, where such inn or tavern is proposed to be kept, then a like recommendation from six respectable housekeepers, shall be sufficient; and such freeholders or householders, as the case may be, shall certify that the person recommended is of good repute for honesty and temperance; upon which certificate and recommendation, the court may, if they are of opinion that the applicant will keep an orderly and useful house of entertainment, grant the license prayed for; which shall continue for the term of one year, and no longer.

Applicant for license to enter into bond

Form of bond.

SEC. 3. Every applicant before he or she shall receive a license, to keep an inn or tavern, shall enter into bond in the penal sum of five hundred dollars, with two or more good and sufficient securities, to be approved of by the court, payable to the governor of the state for the time being, and his successors in office; which shall be in the form, or to the effect following: "Know all men by these presents, That we, A. B. C. D. &c. of the county of ——, are held and firmly bound unto ——, governor of the state of Mississippi, and his successors in office, in the sum of five hundred dollars; to which payment well and truly to be made to the said ——, or his successors in office, we bind ourselves, and every of us, our and every of our heirs, executors and administrators, jointly and severally, by these presents.

Witness, our hands and seals, this —— day of ——, in the year one thousand —— hundred and——."

Condition.

"The condition of the above obligation is such, That, whereas, the above bound A. B. is licensed by the court, to keep an inn and tavern in the house where —— dwelleth, in the county aforesaid, for the space of one year from the date hereof; now if the said A. B. during the continuance of said license, shall keep an orderly inn and tavern, shall not suffer or permit any unlawful gaming in or about his or her said house for money, or the value of money, nor violate the laws concerning inns and taverns, but shall during the said term in all things respecting him (or her) as an inn-holder and tavern-keeper use and maintain good order, and find and provide good and wholesome, and sufficient lodging, diet and entertainment for man, and stabling and provender for horse, and observe the directions of the law relating to inns and taverns; then this obligation to be void, otherwise, to remain in full force and virtue."

License deemed void with regard to any other person or place.

Sec. 4. No license shall entitle any person to keep an inn and tavern at any other place than that specified therein; and such license with regard to any other place or person, shall be deemed void.

No more taverns to be licensed than are necessary.

Sec. 5. It shall be the duty of, and it is hereby expressly enjoined upon the said courts, to license no more inns and taverns in their respective counties, than shall be necessary to accommodate and entertain travellers and strangers, to serve the public occasions of the said counties, and for the convenience of men, meeting together to transact business; and to prevent as much as possible, inns and taverns to be kept for the encouragement of gaming, tippling, drunkenness and other vices.

Persons to pay before receiving license, such sum as the court shall assess.

Sec. 6. Every person to whom license shall be granted as aforesaid, shall, before receiving the same, pay into the hands of the clerk of the court granting such license, such sum as said court shall assess thereon, not less than fifteen, nor more than forty dollars; said court taking into consideration the situation of the place, where such inn and tavern is intended to be kept, as affording more or less profit to the applicant, and the amount so assessed shall be paid into the county treasury, for the use of such county.

Houses of private entertainment not to be kept in a city or town without license.

Sec. 7. Every person desirous to keep a house of private entertainment, in any city, town, or village, shall obtain from the court of the county, in which he or she desires to keep such house, a license therefor, in the same manner as is provided for obtaining a license to keep an inn and tavern: save only, that no recommendation, nor bond and security shall be required of him or her; and he or she shall pay for such license, such sum as the court shall assess, being not more than twenty dollars, nor less than ten dollars. And if any person, within any city, town or

Penalty.

village, not having such license, or a license to keep an inn and tavern, shall receive any pay or compensation, for dieting in his or her house any person or persons, or feeding any horse in his or her stable, or on his or her lot or land, the person so offending shall forfeit and pay for every such offence, a fine of fifty dollars: *Provided, however*, That this penalty shall not be incurred by any person receiving pay for the dieting of any one boarding in his or her house, for the space of one week, or longer; or by any person receiving pay for the feeding of any horse, for any space of time, exceeding one week.

Proviso.

Manner of renewing licenses

SEC. 8. Every license to keep an inn and tavern, or house of private entertainment, may be renewed annually by the said courts, in the same manner, and under the same penalties, assessments and fees, in every respect, as when such license was originally granted: *And further*, if any person, who, at the expiration of his or her license, shall neglect or fail to renew the same in manner aforesaid, and shall, notwithstanding, continue to exhibit and sell victuals, vinous, spirituous, or other strong liquors, for the accommodation of persons, or provender or other sustenance for horses or cattle, or keep a house of private entertainment; then such person shall be subject to the penalties prescribed by this act, for keeping an inn and tavern, or house of private entertainment, without a license.

Tavernkeepers to put up signs.

SEC. 9. Every inn-holder and tavern-keeper, shall, within twenty days after obtaining his or her license; put up or fix a sign on, or adjacent to the front of his or her house, with his or her name thereon, and keep such sign up during the time he or she shall keep an inn and tavern.

Taverns to be supplied with beds, diet, stabling, provender &c.

SEC. 10. Every inn-holder and tavern-keeper, shall have and keep in his or her house, at least two good feather beds or matrasses for guests, with good and sufficient bed clothes for the same, and provide and keep, good, wholesome and sufficient diet for travellers, and stabling and provender of hay and grain for four horses more than his or her own stock, upon pain of forfeiting for every neglect or default, in keeping any of the articles in this clause mentioned, the sum of five dollars, with costs, to be recovered before any justice of the peace of the county, by any person suing for the same.

Rates to be established by the court.

SEC. 11. It shall be the duty of the courts granting licenses, to ascertain, once in every year, the prices of the several liquors, meat and entertainment for man, and also to fix the several sums for the provender, stabling, and the pasturage for horses, to be taken by every licensed inn-holder and tavern keeper, within the respective counties; and every such inn-holder and tavern-keeper, within the respective counties, shall obtain from the clerk of the court, and within ten days after the session thereof, fix up in open view, in the most public room in his or her inn and tavern, a fair copy of the rates and prices of the articles and

Copy of the rates to be put up in the most public room in taverns.

things so ascertained by said court, and keep up such copy, exposed as aforesaid, until a new rate shall be made, under the penalty of four dollars for every day, he or she shall neglect or omit to put or keep up the same; and if any inn-holder and tavern-keeper, shall ask, demand or receive, a greater price for any liquors, diet, lodging, provender, stabling, pasturage, or other article, than by such rate is allowed, he or she so offending, shall, for every such offence, be liable to a fine of not less than four, nor more than twenty dollars, and on conviction of either of the said offences, before any justice of the peace of the county, in addition to said penalties, the license shall immediately become void.

Penalty for demanding or receiving more than is allowed.

Manner in which persons may be authorised in the recess of court to open a tavern.

SEC. 12. Whereas persons are sometimes desirous of obtaining permission to keep an inn or tavern, or to retail spirituous liquors, during the recess of the county court: Therefore, *Be it further enacted*, That on the application of any such person, to the clerk of the county court, in the recess of such court, with the recommendation required by this act, and on entering into bond with security, as aforesaid, and depositing with such clerk, the amount of tax to be assessed by him, not less than fifteen, nor more than forty dollars, and his fee on such license; the said applicant shall be entitled to receive from said clerk, a certificate of such deposite, for which the said clerk shall receive fifty cents for his fee thereon; and such applicant shall thereby be authorised to open an inn or tavern, or retail spirituous liquors, until the next succeeding county court, to which the said applicant shall present the said certificate, for approbation; and if approved by the court, the clerk shall issue a license to the said applicant, to continue in force for one year from the date of said certificate; and if not approved, the clerk shall refund to the applicant, so much of the tax as corresponds to the time yet to come of one year from the deposite.

Penalty for opening a tavern or retailing without license.

SEC. 13. If any person shall presume to keep a tippling house, or shall, without license, open an inn or tavern, or shall sell by retail, any wine, rum, brandy, or other spirituous liquors of any kind whatsoever, under the quantity of one quart, or suffer the same, or any part thereof, to be drank in his or her house, or at the place where it shall be sold, he or she so offending shall be fined for every such offence, in a sum not less than twenty, nor more than one hundred dollars.

When license shall be revoked.

SEC. 14. It shall be the duty of the county courts, within their respective counties, to revoke and annul any license by them granted to any person to keep an inn and tavern, in case such person shall offend against any section, or part of this act, or shall not observe the directions thereof, or shall not do all and every the matters and things therein prescribed and enjoined to be done; and if such person, after a copy of the rule or order of the said court, revoking and annuling his or her license, shall have been served on him or her, shall notwithstanding, continue to keep such inn or tavern, or to sell or retail any vinous, spirituous or strong liquors; then such person shall be liable to the like penalties as for selling without license: *Provided*, That such inn-holder and tavern-keeper, shall have ten days previous notice of the application to the said court, to revoke such license, which notice shall state the cause or causes upon which such application is founded.

Penalty for selling liquors to apprentices or servants.

SEC. 15. If any inn-holder, tavern-keeper, or retailer of spirituous liquors, shall sell any vinous, spirituous or strong liquors, to an apprentice or servant knowing or having reason to suspect or believe him or her to be such, without the consent of his or her master, or mistress, such inn-holder, tavern-keeper, or retailer of spirituous liquors, shall, for every such offence, be liable to a fine not less than five, nor more than fifty dollars.

Penalty for furnishing Indians with liquors.

SEC. 16. If any person or persons residing in, coming into, or passing through this state, or any part thereof, shall furnish, vend, sell or give, or shall direct or procure to be furnished, vended, sold or given, upon any account whatever, to any Indian or Indians, being within this state, any vinous, spirituous or other strong or intoxicating liquors, without special permission in writing, of the superintendent of Indian affairs, he or she so offending, shall forfeit and pay for every quart of such liquor or drink, so furnished, the sum of twenty dollars; and for every quantity, furnished at one time, less than a quart, the sum of ten dollars; to be recovered by any person suing for the same, before a justice of the peace of the proper county, when the penalty or penalties shall not exceed fifty dollars, and when such penalty or penalties shall exceed that sum, then before any court having competent jurisdiction; one half of such penalty or penalties to the informer suing for the same, and the other half to the county, wherein such offence shall have been committed, for county purposes.

Penalty for entertaining or selling liquors to slaves without permission.

SEC. 17. If any inn-holder, tavern-keeper, or other person, shall give, sell, or deliver, any kind of vinous, spirituous, fermented or strong liquors whatever, to any slave or slaves, or in any way entertain such slave or slaves, without the permission of the master, employer or overseer, of such slave or slaves, every inn-holder, tavern-keeper, or other person so offending, shall be fined in a sum, not less than twenty dollars, nor exceeding one hundred dollars.

Tavernkeepers trusting a person for liquors above the sum of five dollars to lose the debt.

SEC. 18. If any inn-holder and tavern-keeper shall trust or give credit to any person or persons, above the sum of five dollars, for vinous, spirituous, or strong liquors, he, she or they so trusting or giving credit to any person or persons, as aforesaid, shall lose the debt, and be for ever disabled from suing for, or recovering the same, or any part thereof; and if any inn-holder and tavern-keeper shall sue for any such debt, above the said sum of five dollars, the person or persons sued, shall and may plead this act in bar: And any note, bill, bond, or other security, for any sum above five dollars, which may be given for any vinous, spirituous, or strong liquors, sold and drank in, or at his or her house, under pretence that it is for victuals or any other thing, whereby to evade this act, shall be void: *Provided, always*, That nothing in this act shall be construed to debar any inn-holder and tavern-keeper from taking, receiving, or recovering any sum or sums of money, which shall become due and owing to him or her, from persons who may be lodgers in his or her house, or from persons not residing in the city, town or vicinage, where such inn and tavern is kept.

Proviso.

List of persons licensed to be furnished the circuit court on the first day of each term.

SEC. 19. It shall be the duty of the clerks of the several county courts, on the first day of the term of the circuit court, of their respective counties, to furnish the court with a list of the persons who have obtained licenses to keep inns and taverns, and houses of private entertainment, and to retail spirituous liquors, within one year next preceding such court, and every clerk neglecting such duty, shall be deemed guilty of a contempt of court, and may be fined by said court, in any sum not exceeding fifty dollars: and said list shall be delivered to the grand jury attending such court, and this act given them in charge by said court. And it shall be the duty of such grand jury, to present all offences against this act, for which the remedy is not otherwise therein provided; and the person or person so presented, shall be tried by a petit jury, without indictment or information, and on conviction, fined by the court, according to the nature of the offence, not exceeding the penalty prescribed by this act, for such offence.

List to be delivered to the grand jury and this act given in charge.

Duty of justices of the peace, assessors and collectors and sheriffs.

SEC. 20. Every justice of the peace is hereby required and enjoined, to cause this act to be put in strict execution within his county; and it shall be the duty of the assessor and collector, and sheriff of each county, if it should come to their knowledge by information or otherwise, that any person has opened an inn or tavern, or house of private entertainment, or is retailing spirituous liquors, contrary to the provisions of this act, to give information thereof to the attorney-general or district attorney, at the commencement of each term of the circuit court of their county, and to furnish a list of the witnesses to prove the same; and the attorney-general or district attorney, shall cause the said witnesses to be sworn, and sent to the grand jury; he shall also at each term of the circuit court, move that a fine be assessed against each clerk, who shall neglect to furnish the court with a list of the persons having obtained licenses to keep inns and taverns, and houses of private entertainment, or to retail spirituous liquors, as herein before directed.

Of the attorney general and district attorneys.

Suits on bonds taken in pursuance of this act.

SEC. 21. In case of the breach of the condition of any bond taken in pursuance of this act, it shall be lawful for any person in the name of the governor, to sue for and recover the penalty of such bond, in any court having jurisdiction thereof; and apply one half the sum so recovered, to his or her own use, and the other half to the use of the county, where the cause of action may accrue; and for taking such bond, and furnishing the license granted as aforesaid, the clerk shall receive, in full for his services, two dollars; and for a copy of the rates, established by the court, the sum of fifty cents.

Clerks fees for taking bond furnishing license and copy of rates.

Sec. 22. All fines, penalties and forfeitures imposed by this act, and not otherwise appropriated, shall be paid into the treasury of the proper county, for county purposes.

Fines how disposed of.

Sec. 23. If any licensed inn or tavern, or house of private entertainment, or for retailing spirituous liquors, shall be transferred before the expiration of such license, to another tenant, it shall be lawful for the court of the county, in which such house may be, to grant to such new tenant, a license to keep such inn and tavern, or house of private entertainment, or for retailing spirituous liquors, for the balance of the term for which the former license was granted, exempt from the payment of any tax therefor.

When licensed houses are transferred court may grant license to the new tenant for the balance of the year.

Sec. 24. If any license granted for either of the purposes, herein before expressed, should expire in the recess of the county court, it shall be lawful for the clerk of such court to renew the same, on application, as in the case of an original license.

Clerk may renew licences that expire in the recess of the court.

CHAPTER 73.

An act, to reduce into one, the several acts, concerning slaves, free negroes, and mulattoes.

Passed June 18, 1822.

Sec. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi in general assembly convened*, That all persons lawfully held to service for life, and the descendants of the females of them, within this state, and such persons and their descendants, as hereafter may be brought into this state, pursuant to law, being held to service for life, by the laws of the state or territory from whence they were removed, and no other person or persons whatsoever, shall henceforth be deemed slaves.

What persons deemed slaves.

Sec. 2. Hereafter it shall be lawful to bring into this state, and to hold therein, any slave or slaves, born within the United States, or any territory thereof, except such slaves as at the time of their removal, were resident out of the limits aforesaid, and such as shall have been convicted of any offence, and transported therefor, under the laws of this state, or of any other state, territory or district.

What slaves allowed to be brought into this state.

What slaves shall not be imported.

Penalty for unlawful importation.

Provision in favor of traveller or temporary residents.

SEC. 3. It shall not be lawful for any person whatsoever, to bring into this state, or to hold therein, any slave or slaves, born or resident out of the limits of the United States, or any slave or slaves that shall have been convicted of any offence, and therefor transported by the laws of this state, or of any other state, territory, or district; and, if any person shall bring into this state, contrary to the provisions of this act, any such slave or slaves, or shall sell, purchase, or hold in this state, any such slave or slaves, knowing such slave or slaves to have been brought into this state contrary to the provisions of this act, every such offender shall forfeit and pay to the state, for the use of the literary fund, for each slave so brought in, sold, purchased or held, a fine of one thousand dollars: *Provided, however,* That the penalty aforesaid shall not be incurred by any person bringing into this state, any slave or slaves, for the purpose only of passing through, or for a short time abiding therein, if such slave or slaves be not kept within this state, for one whole year, or sold or offered for sale therein.

Certificates respecting slaves brought into the state as merchandise.

SEC. 4. It shall not be lawful for any person or persons to import into this state from any of the United States, or the territories thereof, as merchandise, any slave or slaves, either negro or mulatto, or of any other description whatever, above the age of fifteen years, without having previously obtained a certificate, signed by two respectable freeholders in the county of the state or territory from whence such slave or slaves is, or are brought; which certificate shall contain a particular description of the stature and complexion of such slave or slaves, together with the name, age, and sex of the same; and furthermore, that the slave or slaves therein mentioned and described, have not been guilty or convicted of murder, burglary, arson, or other felony, within their knowledge or belief, in such state or territory; which certificate shall be signed or acknowledged, before the clerk of the county, of the state or territory, where the same is given, and certified by said clerk, specifying therein, that the persons whose signatures are affixed thereto, are respectable freeholders of the county and neighborhood in which they reside.

To be registered with the register of the orphans' court.

Oath to their truth.

SEC. 5. Any person, who shall sell any slave or slaves brought into this state, as merchandise, shall cause to be registered with the register of the orphans' court of the county, where such slave or slaves is, or are first sold, every certificate as aforesaid; the seller previously swearing that he believes the contents of such certificate or certificates, to be just and true; which oath said register is hereby authorised and required to administer, for which services he shall receive the sum of one dollar, for each certificate so registered.

Penalty for selling or purchasing a slave without complying with this act.

SEC. 6. If any person shall sell or purchase any slave or slaves, without having complied with the provisions of this act, he, she, or they so offending, shall pay the sum of one hundred dollars for every slave so sold or purchased; recoverable in any court having competent jurisdiction, one moiety to the state, for the use and benefit of the literary fund, the other to the person prosecuting the same to effect.

Sec. 7. If any seller of any slave or slaves, shall cause to be registered any fraudulent certificate of any slave or slaves, he, she, or they so offending, shall for every slave so enumerated in such certificate or certificates, forfeit and pay the sum of five hundred dollars; recoverable in any court having competent jurisdiction; one moiety to the state, for the use and benefit of the literary fund, and the other to the person prosecuting the same to effect; and shall moreover be subject to the pains and penalties of perjury.

Penalty for causing a fraudulent certificate to be registered.

Sec. 8. No slave shall go from the tenements of his master, or other person with whom he lives, without a pass, or some letter or token whereby it may appear that he is proceeding by authority from his master, employer or overseer; if he does, it shall be lawful for any person to apprehend and carry him before a justice of the peace, to be by his order punished with stripes, or not, at his discretion, not exceeding twenty stripes: and if any slave shall presume to come and be upon the plantation of any person whatsoever, without leave in writing from his or her master, employer or overseer, not being sent upon lawful business, it shall be lawful for the owner or overseer of such plantation, to give, or order such slave ten lashes on his or her bare back, for every such offence: and if any negro or mulatto, bond or free, shall furnish a pass or permission, to any slave, without the consent of the master, employer or overseer of such slave, he or she so offending, shall on conviction thereof before any justice of the peace, of this state, receive on his or her bare back, well laid on, any number of lashes not exceeding thirty-nine, at the discretion of such justice of the peace.

Slaves not to go from home without pass.

Punishment for so doing.

Power of owner &c. of plantation to punish slave coming without a pass and not on lawful business.

Punishment of negro &c. bond or free giving slave a pass without master's or overseer's consent.

Sec. 9. No pass or permission to any slave, to buy or sell, shall be deemed good and sufficient to authorise such slave to buy or sell any article or articles whatever, unless such pass or permission be signed by the master, employer or overseer, of such slave; and any slave attempting to utter a pass or permission to buy or sell, other than as above expressed, or offering any article or articles for sale, without such pass or permission, and being found guilty thereof, before any justice of the peace, shall receive not exceeding thirty-nine lashes, by order of such justice, well laid on his or her bare back.

Permission to slaves to buy and sell.

Punishment for offering articles for sale without permission.

Sec. 10. No slave shall keep or carry any gun, powder, shot, club, or other weapon whatsoever, offensive or defensive, except the tools given him to work with, or such as he is ordered by his master, employer, or overseer, to carry from one place to another; but all and every gun, powder, shot, club, or other weapon found in the possession or custody of any slave or slaves, may be seized by any person, and upon due proof thereof, made

Slaves not to keep weapons or ammunition.

Such weapons and ammunition may be seized and forfeited.

Punishment for the offence.

Exception to this rule.

before any justice of the peace of the county or corporation where such seizure shall be made, shall by his order, be forfeited to the seizer for his own use; and moreover, every such offender, shall have and receive, by order of such justice, any number of lashes not exceeding thirty-nine, on his or her bare back, for every such offence: *Provided, nevertheless,* That any justice of the peace may grant, in his proper county, permission in writing to any slave, on the application of his master, employer or overseer, to carry and use a gun and ammunition, within the limits of the land or plantation of his master, employer or overseer, for a term not exceeding one year; and revokable at any time within such term, at the discretion of the justice of the peace granting the same.

Sec. 11. (*Repealed January* 16, 1823. *See Chap.* 74. *Sec.* 7.)

Free negroes not to keep weapons or ammunition without license from court.

Sec. 12. No free negro or mulatto, shall be suffered to keep or carry any firelock of any kind, any military weapon, or any powder or lead, without first obtaining a license from the court of the county or corporation in which he resides, which license may at any time be withdrawn by an order of such court. Any free negro or mulatto who shall so offend, shall on conviction before a justice of the peace, forfeit all such arms and ammunition to the use of the informer.

Duty of constables in relation thereto.

Sec. 13. It shall be the duty of every constable to give information against, and prosecute, every free negro or mulatto, who shall keep or carry any arms or ammunition, contrary to this act.

Punishment for second offence.

Sec. 14. If any free negro or mulatto, who shall have been convicted of keeping or carrying arms or ammunition, shall, a second time offend in like manner, he shall, in addition to the forfeiture aforesaid, be punished with stripes, at the discretion of a justice of the peace, not exceeding thirty-nine.

Who shall be deemed mulattoes.

Sec. 15. Every person other than a negro, of whose grandfathers or grandmothers any one is, or shall have been a negro, although all his other progenitors, except that descending from the negro, shall have been white persons, shall be deemed a mulatto; and so, every such person, who shall have one fourth part or more of negro blood, shall in like manner be deemed a mulatto.

Riots, routs, unlawful assemblies, tresspasses and seditious speeches by slaves, how punishable

Sec. 16. Riots, routs, unlawful assemblies, trespasses and seditious speeches, by a slave or slaves, shall be punished with stripes, at the discretion of a justice of the peace; and should any quarrel or fight take place with any free negro or mulatto, and any slave or slaves, such free negro or mulatto, being proved before a justice of the peace, to be the aggressor in such quarrel or fight, shall be punished with stripes, at the discretion of the justice, not exceeding thirty-nine lashes; and he who will, may apprehend and carry him, her or them, before such justice.

SEC. 17. (*Repealed January* 16, 1823. *See Chap.* 74, *Sec.* 7.)

SEC. 18. (*Repealed January* 16, 1823. *See Chap.* 74, *Sec.* 7.)

SEC. 19. If any white person shall at any time be found in company with slaves, free negroes or mulattoes,* at any unlawful meeting or assembly, and oath thereof being made before a justice of the peace of said county, such justice shall forthwith issue his warrant, commanding such person to be brought before him, whose duty it shall be to bind over such person, with good security, to appear at the next superior or circuit court of said county, to answer to said charge; and on conviction thereof, such person shall be fined in the sum of twenty dollars for every such offence, to the use of the informer, and shall, moreover, receive not exceeding twenty lashes on his bare back, at the discretion of the court.

Punishment of white persons found in company with slaves at an unlawful meeting.
(*See Chap. 74, Sec. 7.)

SEC. 20. Every justice of the peace, upon his own knowledge of such unlawful assembly or meeting, or information thereof to him made within ten days thereafter, shall issue his warrant to apprehend the persons so met or assembled, and cause them to be brought before himself, or any other justice of his county or corporation, to be dealt with as this act directs; and every justice failing herein, shall forfeit and pay ten dollars for every such failure; and every sheriff, under sheriff or constable, who shall fail, upon knowledge or information of such assembly or meeting, to endeavor to suppress the same, and bring the offender or offenders before some justice of the peace, to receive due punishment, shall be liable to the like penalty of ten dollars; both which penalties shall be to the informer, and recoverable with costs, before any justice of the county or corporation, wherein such failure shall be.

Duty of justices of the peace to suppress such meetings.

Penalty for neglect.

Penalty on sheriff or constable for similar neglect.

SEC. 21. Any negro or mulatto, bond or free, shall be a good witness in pleas of the state, for or against negroes or mulattoes, bond or free, or in civil pleas where free negroes or mulattoes shall alone be parties, and in no other cases whatever.

Where negroes and mulattoes may be witnesses and where not.

SEC. 22. (*Repealed January* 16, 1823. *See Chap.* 74, *Sec.* 7.)

SEC. 23. Any person who shall, on the Sabbath day, buy, sell or receive of, to, or from a slave, any commodity whatsoever, without the leave or consent of the master, employer or overseer of such slave, given in writing, or shall buy, sell, or receive of, to, or from any free negro or mulatto, any commodity whatsoever, on the day aforesaid, shall, in addition to the penalties aforesaid, forfeit and pay the sum of twenty dollars, to be recovered by warrant, from any justice of the peace of the coun-

Penalty for trading on the Sabbath day with a slave without leave.

Or with any free negro or mulatto.

ty or corporation wherein such offender resides, by any person who will prosecute for the same.

Court or justice may bind to good behavior persons guilty of such unlawful trading.

Imprisonment on failing to give security for good behavior.

SEC. 24. If it shall be proved to the satisfaction of any court of law, or justice of the peace, that any person hath been guilty of any of the offences of buying, selling, or receiving, to, or from any slave, without the consent of his or her master, employer or overseer, or of buying, selling, or receiving, to, or from any free negro or mulatto, contrary to the true intent and meaning of this act, it shall be lawful for such court, or justice of the peace, to require such person to give security for his good behavior, for one year or longer, at the discretion of such court or justice; and on failure of such person to give the security required, he or she shall be committed to jail, there to remain till the security be given, or till he or she be otherwise discharged by due course of law.

Penalty on owner licensing slave to go at large and trade as a freeman.

SEC. 25. If any master, or employer of a slave, shall license such slave to go at large, and trade as a freeman, the master or employer shall forfeit and pay the sum of fifty dollars to the state, for the use of the literary fund; and if, after conviction, such slave shall be found so going at large, and trading, the master or employer shall again be liable to the like penalty; and so, as often after conviction, as such slave shall be found so going at large and trading.

Slave going at large or hireing himself out, may be carried before a justice of the peace.

Who may fine the owner &c.

Or commit the slave to jail.

Court may impose fine.

Or order slave to be sold.

Proceeds of sale how to be applied.

SEC. 26. If any person shall permit his or her slave, or any slave hired by him or her, to go at large, or hire himself or herself out, it shall be lawful for any person, and it shall moreover be the duty of every sheriff, deputy sheriff, coroner and constable of a county, to apprehend and carry such slave before a justice of the peace, of the county or corporation where apprehended; and if it shall appear to the justice, that such slave hath been permitted to go at large, or hire himself or herself out, he shall forthwith impose on the owner of such slave, or the person permitting him or her to go at large, or hire himself or herself out, a fine not less than twenty, nor more than fifty dollars; or may, in his discretion, order the slave to the jail of the county, there to be safely kept until the next county court; when, if it shall appear to the court, that such slave hath been permitted to go at large, or hire himself or herself out, contrary to law, it shall be lawful for the said court, in their discretion, and they are hereby required, either to impose on the owner of such slave, or the person permitting him or her to go at large, or hire himself or herself out, as aforesaid, a fine not less than twenty dollars, nor more than one hundred dollars, or order the sheriff or other officer of their county, to sell every such slave for ready money, at the next court held for the said county, notice being given at the courthouse door, at least twenty days before such sale: one third of the amount of such sale shall go to the state, for the use of the literary fund, and the residue shall be paid by the sheriff or other officer, after deducting six *per centum* on the whole amount for his trouble, and the jailor's fees, to the person who shall inform thereof, and cause the fact to be established; and when there shall be no informer, the same shall go to the state, for the use of the literary fund. And in every case of a fine, imposed under this section, the slave shall be held in custody, and liable therefor, and may be sold by order of the justice or court imposing the same; and in satisfaction thereof, and all incidental charges, unless the same be paid within ten days after such fine is imposed; upon payment whereof, the said slave shall be discharged. All such fines shall go to the state, for the use of the literary fund: *Provided*, That no sale of a slave under this section, shall convey a greater interest in such slave, than is held by the person committing a breach hereof, unless it shall appear, that the owner was privy to, or connived at such breach.

Where fine is imposed slave to be held in custody and liable therefor.

When to be sold unless fine be paid.

What interest in slave to pass by sale.

SEC. 27. Any person who shall suffer a slave, held by him or her, as trustee, guardian, executor or executrix, administrator or administratrix, to hire himself or herself out, contrary to the provisions of this act, shall forfeit and pay fifty dollars, for each and every such offence, to be recovered by any person who will sue for the same, by action of debt or information, in any court of record within this state.

Penalty on trustee, guardian, executor &c suffering slave to hire himself out.

SEC. 28. It shall be the duty of all sheriffs, coroners, constables and justices of the peace, on seeing any slave offering for sale any article or articles whatever, or carrying the same with that intention, without the leave or consent in writing, from the master, overseer or employer of such slave, specifying the article or articles so permitted to be sold or offered for sale, to seize from, and take for their own use, all such article or articles which said slave or slaves may have in his or their possession; and shall, moreover, have power and authority, and they are hereby directed, to order such slave or slaves to receive on his, her or their bare back, any number of lashes not exceeding ten; and every sheriff, coroner, constable, or justice of the peace, failing or neglecting to do and perform what is required of them, and every of them, by this section, shall be deemed guilty of a misdemeanor in office.

Sheriffs, coroners, constables and justices of the peace to seize articles offered for sale by slave without permission.

And order such slave to receive not exceeding ten lashes.

Penalty for neglect.

SEC. 29. It shall and may be lawful for any citizen of this state, on seeing any slave or slaves, offering, or carrying for sale any article or articles whatever, without a written permission, from his or their master, overseer or employer, specifying the article or articles, so permitted to be sold or offered for sale, to apprehend and take the said slave or slaves, before any justice of the peace: and on it appearing satisfactorily to such justice, that the said slave or slaves had no permission or authority from his or their master, overseer or employer, as required by law, to sell or offer for sale such article or articles; then, and in

Any citizen may take a slave offering articles for sale without permission before a justice of the peace.

Articles forfeited to the apprehender.

all such cases, it shall be the duty of such justice, to order and direct that every such article or articles, offered for sale by such slave or slaves, be forfeited to the apprehender of such slave or slaves, for his own use; and shall, moreover, order and direct said slave or slaves to receive on his or their bare back ten lashes.

Punishment of slave.

Nothing in this act to abolish fines for trading with slaves without permission.

SEC. 30. Nothing in this act shall be construed to alter or abolish any of the fines or penalties incurred by persons who shall trade or barter with slaves, without permission in writing from their masters, overseers or employers, as herein provided for by this act: *Provided also*, That nothing in this act shall be so construed as to alter or change the right of property in any article or articles which may be stolen by any slave and offered for sale as aforesaid.

Or to change the right to property stolen and offered for sale by slaves.

Punishment of free negroes for furnishing slaves with ardent liquors.

SEC. 31. Any free negro or mulatto who shall give or sell to any slave or slaves, any ardent or other intoxicating liquor, upon conviction thereof, before any justice of the peace, shall receive not exceeding thirty-nine lashes, by order of such justice, well laid on his or her bare back.

Punishment of negro or mulatto for abusive language or assaulting a white person.

SEC. 32 If any negro or mulatto, bond or free, shall, at any time use abusive and provoking language to, or lift his or her hand in opposition to any person, not being a negro or mulatto, he or she so offending, shall, for every such offence, proved by the oath of the party, before a justice of the peace, of the county or corporation, where such offence shall be committed, receive such punishment, as the justice shall think proper, not exceeding thirty-nine lashes, on his or her bare back, well laid on; except in those cases, where it shall appear to such justice, that such negro or mulatto was wantonly assaulted, and lifted his or her hand, in his or her defence.

Exception.

Runaways may be apprehended sent to the owner or committed.

SEC. 33. All runaway slaves may be lawfully apprehended by any person, and carried before the next justice of the peace, who shall either commit them to the county jail, or send them to the owner, employer or overseer, if known; who shall pay for every slave so taken up, the sum of six dollars, to the person apprehending him or her, and also all reasonable costs and charges. And the better to establish what slaves shall be lawfully deemed runaways; if any slave shall absent himself, or herself, from his or her usual place of residence, or from the service of his or her owner, employer or overseer, without the written permission of, or some other token from, such owner, employer or overseer, equivalent to such permission; every such slave shall be deemed and held a runaway, and the person apprehending him or her, shall, on delivery to the owner, employer or overseer, or commitment to jail, be entitled to the above reward, and all reasonable costs and charges, for such slave so apprehended, delivered, or committed, as aforesaid.

Charges for their apprehension.

What slaves deemed runaways.

When committed to be advertised by the jailor.

When and how runaways shall be advertised for sale.

Sheriff's commissions.

Proceeds how disposed of.

Provision when the owner shall prove his property in such slave.

SEC. 34. Where any slave shall be committed to the jail of any county, within this state, as a runaway, it shall be the duty of the sheriff or jailor, forthwith, to cause an advertisement with a description of the person and wearing apparel of the runaway, to be inserted in some public newspaper of this state, most convenient to the place where such runaway shall be committed, for the space of six months; and if such runaway slave shall not be claimed, and proved by the owner thereof, at or before the expiration of six months from the first publication of the commitment of such slave, it shall be lawful for the sheriff of the proper county, to sell such runaway slave at public auction, at the court-house of his county, upon giving at least thirty days previous notice of such sale, by advertisement published in some newspaper in this state, and at the court-house of the county, and two other public places within the same; and out of the proceeds arising from the sale of any runaway slave as aforesaid, the sheriff shall be entitled to the same commission and fees, as are allowed in the case of executions; and the balance, after paying for apprehending, and all prison fees, and the maintenance of said runaway slave whilst in jail, shall be for the use of the county: *Provided*, That if the owner of such runaway slave shall, after such sale, prove his property in any such slave, the proper county shall pay to him the amount that shall have been paid into the county treasury, on account of the sale of such slave; but the right to any slave sold as aforesaid, shall be and remain vested in the purchaser under the sale made by the sheriff as aforesaid, any law to the contrary notwithstanding.

Proof required of persons claiming runaways.

SEC. 35. No runaway slave shall be delivered to the owner or person claiming him or her, unless he shall have proved, before the court of some county or corporation, or a justice of the peace of the county or corporation in which such runaway is confined, by his own or another's oath, that he had lost such an one as was described in the advertisement, and that the runaway, when shewn to him, is the same that he had lost; and shall, moreover, produce the clerk's or justice's certificate of such proof made, and shall pay the expenses incurred in the apprehension and securing of said runaway.

Manner in which runaway slaves lying in swamps, woods, &c. may be taken.

SEC. 36. Whereas many times slaves runaway, and lie out hid, and lurking in swamps, woods, and other obscure places, killing hogs, and committing other injuries to the inhabitants of this state; Therefore, *Be it further enacted*, That in all such cases, upon intelligence given, of two or more slaves lying out as aforesaid, any justice of the peace of the county where the slaves are supposed to lurk, or do mischief, shall be, and he is hereby empowered and required, by warrant, reciting their names, and owners' names, if known, to direct the leader of any patrol detachment within his jurisdiction, to take such power with him, as he shall think fit and necessary, for the effectual apprehending of such lying out slave or slaves, and go in search of them; and upon their being apprehended, to commit them, or any of them, to the jail of his county for further trial. And for every such out-lying slave by him apprehended, and committed to jail, as aforesaid, he shall be entitled to a reward of thirty dollars, to be paid out of the treasury of the state; three-fourths of which sum, shall be reimbursed to the state by the owner of the said slave: *Provided*, That if the owner be an inhabitant of this state, the said sum shall be added to his tax for the current year, and be collected and accounted for in the same manner, as other public taxes are: *And provided also*, That any other person or persons who shall apprehend and commit to jail, as aforesaid, any out-lying slave, he or they shall be entitled to the same reward for every such apprehension and commitment.

Reward therefor.

Keepers of ferries or toll bridges not to let slaves cross without pass.

Penalty.

SEC. 37. If any owner or keeper of any ferry or toll-bridge, within this state, shall allow any slave to cross such ferry or bridge, without a pass or permission in writing, from the master, employer, or overseer of such slave, he or she shall forfeit and pay to the party aggrieved, the sum of twenty-five dollars, recoverable before any justice of the peace of the county, where the offence shall have been committed.

Indian agents may demand thirty dollars for taking up a runaway.

How to be expended.

Sum allowed for daily subsistance of runaway.

SEC. 38. It shall be lawful for any Indian agent within this state, to demand and receive from the owner, employer or overseer, the sum of thirty dollars for each runaway slave taken up within their respective agencies; fifteen dollars of which sum shall be paid by said agent to the person taking up such runaway slave, and the balance to be retained and expended, as the agents may think proper, in building a jail or procuring irons for the confinement or better security of all runaway slaves, within their respective agencies, and there shall be allowed for the daily subsistance of each runaway slave, the sum of fifty cents, to be paid by the master, employer, or overseer of such slave.

Indian agents to report to the governor annually the amount received, &c.

SEC. 39. The Indian agents within this state, shall report to the governor, annually, the amount received for runaway slaves, and how applied; and they shall not be authorised to make any other charge for runaway slaves, except as provided by this act.

To advertise runaways.

SEC. 40. It shall be the duty of the agent to advertise all runaway slaves in his custody, in the same manner as is required by this act of sheriffs and jailors of this state; and the owner, employer or overseer, of the slave or slaves, shall pay the usual expenses thereof.

Slaves not to possess horses cattle, sheep or hogs.

SEC. 41. It shall not be lawful for any slave to possess in his or her own right, any horse, mare, gelding, mule, or any other cattle, sheep or hogs whatever; and if any slave shall be so possessed of such property, the same shall be forfeited, and may be sold by order of any justice of the peace of the county where such property shall be found; one moiety of the proceeds to the use of the county, and the other moiety to the informer.

Punishment of slave for keeping dogs.

Penalty on the master.

Sec. 42. No slave shall be permitted to keep any dog or dogs, under any pretence whatsoever; and the slave or slaves so offending, upon complaint thereof before any justice of the peace shall be punished with stripes not exceeding twenty-five, for every such offence; and the master, employer or overseer, who shall permit his slave or slaves to keep any dog or dogs, contrary to this act, shall forfeit and pay the sum of five dollars, for each and every dog so kept, to and for the use of the person complaining; and, moreover, shall make good all damages done by any dog or dogs, belonging to, or kept by any of his or her slave or slaves.

Slaves not to cultivate cotton for their own use.

Penalty on the master.

Sec. 43. No slave or slaves shall hereafter cultivate cotton within the limits of this state, for his, her, or their own use, on any pretence whatever. And if any master, employer or overseer of any slave or slaves, shall authorise or permit him, her or them, to cultivate cotton as aforesaid, such master, employer or overseer, so offending, shall forfeit and pay the sum of fifty dollars, for the use of the county where the offence is committed, recoverable by information, or presentment of a grand jury, in any court of competent jurisdiction.

Cruel punishments not be inflicted on slaves.

Penalty.

Sec. 44. No cruel or unusual punishment shall be inflicted on any slave within this state. And any master, or other person, entitled to the service of any slave, who shall inflict such cruel or unusual punishment, or shall authorise or permit the same to be inflicted, shall, on conviction thereof, before any court having cognizance, be fined according to the magnitude of the offence, at the discretion of the court, in any sum not exceeding five hundred dollars, to be paid into the treasury of the state, for the use and benefit of the literary fund.

Slaves declared personal estate.

Sec. 45. All negro and mulatto slaves, in all courts of judicature within this state, shall be held, taken and adjudged, to be personal estate.

Forfeiture by tenant for life, for removing slaves out of the state without consent of reversioner or remainderman.

Sec. 46. If any person or persons possessed of a life estate in any slave or slaves, shall remove, or voluntarily permit to be removed, out of this state, such slave or slaves, or any of their increase, without the consent of him or her in reversion or remainder, such person or persons shall forfeit every such slave or slaves so removed, and the full value thereof, unto the person or persons that shall have the reversion or remainder thereof, any law, custom, or usage to the contrary notwithstanding.

Forfeiture where tenant is *femme covert* t be for the

Sec. 47. If any female, possessed as aforesaid, shall be married to a husband, who shall remove, or voluntarily permit to be removed, out of this state, any such slave or slaves, or any life of the husband.

Further remedy by action against the husband.

of their increase, without the consent of him or her in reversion or remainder, in such case it shall be lawful for him, or her in reversion or remainder, to sue for, recover, and possess such slave or slaves so removed, for and during the life of the said husband; who shall, moreover, be liable to the action of the person or persons entitled to the reversion or remainder thereof, for the full value of the slave or slaves so removed.

Penalty on a free person for harboring slave.

Punishment of slave for like offence.

Sec. 48. Any free white person, negro or mulatto, who shall be convicted before any justice of the peace, of secretly harboring a slave or slaves, without the consent of his, her, or their master, employer or overseer, shall be fined in a sum not exceeding twenty dollars, and shall, moreover, be liable to the party aggrieved, for damages. And any slave who shall be convicted as aforesaid, of a like offence, shall receive such corporal chastisement, not exceeding thirty-nine lashes, as shall be directed by the justice of the peace before whom such slave may be brought.

Punishment for carrying a slave out of the state or county without owner's consent, with fraudulent intent:

Fine and imprisonment.

Forfeiture of double value, costs and expenses to owner

Recoverable by action on the case.

Bail required as of course

Sec. 49. Whoever shall hereafter carry, or cause to be carried, any slave or slaves out of this state, or, who shall carry, or cause to be carried, any slave or slaves out of any county within this state, into any other county, within the same, without the consent of the owner or owners of such slave or slaves, or of the guardian of such owner or owners if he, she, or they be a minor, or minors, and with intention to defraud or deprive such owner or owners of such slave or slaves, shall be adjudged guilty of felony, and upon conviction thereof, shall be punished by a fine, not less than two hundred dollars, nor more than six hundred dollars, and shall also be imprisoned for a term not exceeding one year, at the discretion of the court. And the person offending herein, shall moreover be subjected to pay to the owner or owners of the slave or slaves carried away as aforesaid, double the value of such slave or slaves, together with double the amount of all costs and expenses, by him, her or them incurred, in regaining or attempting to regain such slave or slaves; to be recovered by an action on the case, in any court of record in this state, having original jurisdiction over such actions. In all actions instituted for the recovery of the penalty imposed by this section, bail may be required of the defendant or defendants, as of right.

Punishment of slaves conspiring to rebel or murder any free white person.

Sec. 50. If any negro or other slave shall, at any time, consult, advise or conspire to rebel, or make insurrection, or shall plot or conspire the murder of any free white person or persons whatsoever, every such consulting, plotting or conspiring, shall be adjudged and deemed felony, and the slave or slaves, convicted thereof, in manner herein after directed, shall suffer death.

Of free person advising or con-

Sec. 51. If any free person shall advise or conspire with a slave or slaves, to rebel or make insurrection, or shall in any wise aid, assist or abet any slave or slaves making rebellion or insurrection, or shall advise or assist such slave or slaves, in the murder of any person whatsoever, or shall consult, advise or conspire with any other free person, or with any negro or other slave, to induce, entice or excite any slave or slaves, to rebel or make insurrection, every such free person so counselling, advising, plotting or conspiring, or so aiding, assisting or abetting, on conviction of any of the said offences, shall be held and deemed a felon, and shall suffer death.

spiring with a slave in rebellion or murder.

Sec. 52. If any slave or slaves, shall, at any time commit an assault and battery, upon any white person, with intent to kill, every such slave or slaves so committing such assault and battery, with intent to kill, as aforesaid, and being thereof convicted, in manner hereinafter directed, shall suffer death.

Punishment of slave for assault and battery on a white person with intent to kill.

Sec. 53. If any slave, free negro or mulatto, shall prepare, exhibit or administer to any person or persons in this state, any medicine whatsoever, with intent to kill such person or persons, he or she so offending, shall be judged guilty of a felony, and shall suffer death.

Of slave, free negro, &c. for administering medicine with intent to kill.

Sec. 54. When any negro or mulatto slave shall be convicted of any felony, not punishable with death, such negro or mulatto slave, shall be burnt in the hand by the sheriff, in open court, and suffer such other corporal punishment as the court shall think fit to inflict, except where he or she shall be convicted of a second offence of the same nature, in which case such negro or mulatto slave shall suffer death.

Slaves how punishable for felonies not capital.

On second conviction.

Sec. 55. If any slave shall maim a free white person, or shall attempt to commit a rape on any free white woman, or female child under the age of twelve years, or shall attempt to commit any capital crime, or shall be voluntarily accessary before or after the fact, in any capital offence, or shall be guilty of the manslaughter of any free person, or shall be guilty of burning any dwelling house, store, cotton-house, gin or out-house, barn or stable, or shall be accessary thereto, or shall be guilty of any of the crimes aforesaid, or any other crime made capital by law, or shall be accessary thereto, every such slave shall, on conviction, suffer death.

Certain capital offences.

Sec. 56. If any slave or slaves shall feloniously take, steal and carry away, any goods or chattels, under the value of twenty dollars, he, she, or they so offending, and being thereof legally convicted, before any justice of the peace, shall be deemed guilty of petit larceny, and the master, employer or overseer of such slave, shall restore the goods and chattels so stolen, to the owner or owners thereof, or pay the value thereof, to such owner or owners; and any slave so offending, or who shall be accessary thereto before the fact, shall receive any number of lashes not exceeding thirty-nine, on his or her bare back, well

Petit larceny by slaves, how punished.

The master to restore goods.

Liable for costs

laid on, by order of said justice; and also, the master, employer or overseer of such slave, shall stand charged with the costs of prosecution.

Grand larceny by slaves, how punished

Restoration of goods.

SEC. 57. Any slave or slaves, who shall feloniously take, steal and carry away any goods or chattels, above the value of twenty dollars, shall be deemed guilty of grand larceny, and the goods and chattels so stolen, shall be restored in like manner, and the same punishment inflicted both on principal and accessary, as is provided in the case of petit larceny.

What deemed legal evidence in cases arising under this act.

SEC. 58. And for the more clear, perfect and distinct understanding of what shall be deemed legal evidence, in all cases, arising under this act, *It is further enacted*, That the court may take for evidence the confession of the offender, the oath of one or more credible witness or witnesses, or such testimony of negroes or mulattoes, bond or free, with pregnant circumstances, as to them shall seem convincing.

Punishment of negro or mulatto for perjury.

Charge to negro or mulatto before sworn as witness.

Form of charge

SEC. 59. If any negro or mulatto shall be found, upon due proof made to any county or corporation court of this state, to have given false testimony, every such offender shall, without further trial, be ordered by the said court, to have one ear nailed to the pillory, and there to stand for the space of one hour, and then the said ear to be cut off, and thereafter the other ear nailed in like manner, and cut off at the expiration of one other hour, and moreover to receive thirty-nine lashes on his or her bare back, well laid on, at the public whipping post, or such other punishment as the court shall think proper, not extending to life or limb. And whenever it shall be necessary to examine any slave, free negro or mulatto, as a witness on any trial, it shall be the duty of the court, or justice sitting on such trial, before such witness shall be examined to charge him to declare the truth, in the manner following, to wit: "*You are brought here as a witness, and, by the direction of the law, I am to tell you before you give your evidence, that you must tell the truth, the whole truth and nothing but the truth; and if it be found hereafter, that you tell a lie, and give false testimony in this matter, you must for so doing, have both your ears nailed to the pillory, and cut off, and receive thirty-nine lashes on your bare back, well laid on, at the common whipping post.*"

Mode of trial of slaves for felony.

Time of trial. Sheriff to summon court.

To summon jury in capital cases.

SEC. 60. The justices of every county or corporation court in this state, shall be justices of oyer and terminer, for the trial of slaves, charged with felony; which trials shall be at the courthouse of the proper county, and at such time, as the sheriff or other officer, whose duty it shall be to summon such court, shall appoint, unless the same be at a stated term of the county or corporation court, not being less than five, nor more than ten days after the offender or offenders shall have been committed to jail. And when any slave or slaves shall be committed for any offence, which by this act is declared to be capital, and punishable with death, it shall be the duty of such sheriff or other officer, to summon twenty-four good and lawful men of the vicinage, twelve of whom at least shall be slave-holders, in their own right; and neither the master of such slave or slaves, or any person related to him, or to the prosecutor, shall be one of the persons so summoned, to be and appear at the time and place, when and where the said court shall be convened, for the trial of such offender or offenders; from which number a jury of twelve shall be selected, sworn and empannelled; and such court and jury shall proceed to the trial of the slave or slaves charged as aforesaid, upon legal evidence, without presentment or indictment, and on conviction by the verdict of a jury, the court shall proceed to pass sentence, and order execution thereof according to law.

Trial without presentment or indictment.

Challenge of jurors.

SEC. 61. In the trial of slaves, the right of challenge of jurors for cause, shall be allowed to both parties, according to the rules of law prescribed in other cases of trial by jury, and a peremptory challenge on the part of the prisoner to the number of six, in capital cases.

New trials in capital cases.

SEC. 62. In the trial of any slave or slaves, for a capital crime, the court shall have power to grant new trials, according to the rules established in other criminal cases.

Mode of proceeding against justices refusing to attend or hold court when summoned.

SEC. 63. In case any justice or justices of a county or corporation court, summoned by the sheriff or other officer, to attend any special court for the trial of any slave or slaves, as aforesaid, shall refuse, without some lawful excuse, to attend according to such summons, or having attended shall refuse to hold such court, the justice or justices so refusing shall be deemed guilty of a misdemeanor in office, and the sheriff or other officer, shall report the name or names of such defaulters to the next circuit court of the county, who shall have cognizance of the case, by presentment of a grand jury, or information, and on conviction thereof, the justice or justices so offending, shall be removed from office, by the governor, and rendered incapable of holding any civil office in this state thereafter.

Provision in case sufficient number of justices do not attend.

Deficiency of jurors by non-attendance how supplied.

SEC. 64. In case a sufficient number of justices to constitute a court do not attend at the time appointed to hold such court, the sheriff may adjourn said court from day to day, for the space of three days, unless a court be sooner formed for the trial of such slave or slaves; and if there should be a deficiency of jurors, by non-attendance or challenge, it shall be the duty of the sheriff to summon a sufficient number of by-standers to compose a jury, or to complete the panel, as the case may be: *Provided*, That the jurors so summoned, shall possess the qualifications herein before prescribed: and each of the jurors who shall serve on the juries so summoned for the trial of any slave or slaves, shall be allowed the sum of one dollar and twenty-five cents per day, for each day's attendance, to be paid out of the

Compensation of jurors.

county treasury, on the clerk's certificate, that the service has been rendered.

Fine on jurors failing to attend.

SEC. 65. Any juror who shall fail or refuse to attend a court for the trial of any slave or slaves, having been previously summoned according to this act, without some lawful excuse, shall be deemed guilty of a contempt of court, and fined in a sum not less than twenty dollars, nor more than one hundred, to be levied of the goods and chattels of such defaulting juror, and paid into the treasury of the county.

Court may adjourn for good cause.

Trial may be continued from term to term Not beyond the third term.

SEC. 66. Any court summoned for the trial of any slave or slaves as aforesaid, shall have power for good cause shewn, to adjourn either to the next stated term of the county court or corporation court, or to an earlier day, at the discretion of such court: and if such adjournment be to the next stated term of the county or corporation court, the trial shall be had in the same manner, as if the called court had altogether failed to meet; and such trial may for good cause shewn, be continued from term to term; *Provided*, That such continuance be not beyond the third term, after he, she, or they, shall have been committed.

Clerks' duties

Compensation of clerks.

Of sheriff.

Of justices.

SEC. 67. Whenever any county or corporation court shall sit as a court of oyer and terminer, for the trial of any slave or slaves, it shall be the duty of the clerk of every such court to attend such court, administer oaths, and record its proceedings, which shall be filed in his office; and to issue all subpœnas, both for the state, and such slave or slaves, to compel the attendance of witnesses; and such clerk shall receive in full for his services, three dollars per day, for each day he shall be necessarily engaged in attending said court, to be paid out of the county treasury, on a certificate from the court that such service has been rendered; and the sheriff of the county shall receive in full for his services in summoning such court and jury, and witnesses, and attending such court, three dollars per day for each day he shall be necessarily engaged therein, and the sum of twelve dollars for the execution of each slave, to be paid out of the county treasury, on a certificate of the clerk of the county or corporation court, that the services have been performed; and every justice who shall attend such courts, shall be allowed three dollars per day, for each day he may so attend, to be paid out of the county treasury, on the clerk's certificate, that the service has been rendered.

In trial of slaves on charges of capital nature jury may convict of crime under that degree.

SEC. 68. If it shall appear on evidence to any court and jury sitting to try a slave on a charge of a capital nature, that the crime is under that degree, it shall be lawful for the jury to convict him or her, of such inferior crime; and the court shall proceed to punish such slave by burning in the hand, or stripes according to the nature and magnitude of the offence.

SEC. 69. No person having interest in a slave, shall sit upon the trial of such slave.

Person interested not to sit on trial of slave.

SEC. 70. The court shall in all cases, have power to appoint counsel on the part of the prosecution, in case the attorney-general or district attorney be not present at such court, who shall be allowed a sum not exceeding twenty dollars, at the discretion of the court, in full compensation for his services, and on the certificate of the clerk of the court, of such appointment and services, the same shall be paid out of the county treasury; and such court shall also have power, at their discretion, and according to the circumstances of the case, to assign counsel to defend such slave or slaves.*

When court may appoint counsel on part of prosecution.

And assign counsel to defend slave.

(*See Chap. 74 sec. 6.)

SEC. 71. If any court for the trial of any slave or slaves shall fail to meet on the day to which it was summoned or adjourned, all recognizances entered into by any person or persons, to appear at such called court, shall stand obligatory to the next court of such county or corporation, when such trial shall be had in the same manner as before directed.

On failure of court to meet recognizances to stand obligatory to next court.

SEC. 72. If any slave or slaves shall be convicted of any capital offence, and receive sentence of death, and shall escape after condemnation, and before the day of execution, and shall thereafter be retaken; in all such cases, it shall be lawful for the sheriff or other officer to summon the justices of the county or corporation court, for the purpose of identifying such criminal; and upon such identity being proven, to carry into effect the sentence of the former court, by ordering such further day for the execution of such criminal, as they shall think proper.

Court may be called to identify slaves condemned, retaken after escape.

Power of such court.

SEC. 73. When judgment of death shall be passed upon any slave or slaves, there shall be twenty days at least, between the time of passing judgment, and the day of execution, except in cases of conspiracy, insurrection or rebellion.

Time between judgment of death and execution.

SEC. 74. Every circuit court of law, within this state, shall constantly give this act, in charge to their grand juries, at the time when such grand juries shall be sworn; and the said courts, and also the county and corporation courts, in this state are hereby declared to have cognizance of all offences against the provisions of this act, whether the same be cognizable before a justice of the peace, or otherwise; and on all convictions, in pursuance of any presentment of a grand jury, or by any county or corporation court, the fines, forfeitures and penalties, which would otherwise have gone to the informer, shall accrue to the state, for the use and benefit of the literary fund.

Circuit courts to give this act in charge to grand juries.

Courts having congnizance of offences against this act.

Fines and penalties.

SEC. 75. It shall not be lawful for any person or persons, being the owner or owners of slaves, to emancipate them, or any of them, unless by his or her last will and testament, or by any other instrument in writing, under his, her, or their hand and

How slaves may be emancipated

seal, attested and proved, in the manner required by law, by two credible witnesses, or the instrument of writing acknowledged by the party or parties, in the court of the county or corporation, where he, she, or they reside, and also, prove to the satisfaction of the general assembly, that such slave or slaves have done and performed some meritorious act for the benefit of such owner or owners, or some distinguished service for the benefit of this state; and the last will and testament, or other instrument in writing, as aforesaid, shall not have validity, until the same shall be sanctioned by an act of the general assembly, nor until the owner or owners shall have complied with the conditions, which may be specified in such act: *Provided, nevertheless*, That all slaves so emancipated, shall be liable to be taken by execution, to satisfy any debt, contracted by the person or persons emancipating him, her or them, before such emancipation is made: *And provided also*, That in all such cases of emancipation, by any last will and testament, the widow shall be entitled to her right of dower in the slave or slaves whereof her husband died possessed, notwithstanding, he, she, or they may be emancipated by his will; and where part of the slaves only shall be emancipated, the widow's part shall be taken out of those who are not set free, if there be enough to make her lawful proportion of the whole number whereof the husband died possessed.

Slaves emancipated, liable to execution for previous debts of owner.

Widow entitled to right of dower in slave emancipated by will.

Remedy given to persons conceiving themselves illegally detained in slavery.

SEC. 76. Any person, in this state, who shall conceive himself or herself, illegally detained as a slave in the possession of another, and claiming his or her freedom, shall proceed by petition to the circuit court of the county, where his or her master or owner, shall reside, unless his or her master or owner be a non-resident of this state; and in that case, to the circuit court of any county in this state, where such person may be held in slavery: and the master or owner, if the slave be in his or her posssesion, shall enter into bond, with approved security to the governor of the state for the time being, and his successors in office, in a sum to be adjudged of by the court, conditioned that the slave shall be forthcoming, and subject to the order of the said court; and that he will abide by the judgment, sentence, or decree, the said court may render in the premises: in which case, such slave shall remain in the service or possession of his or her master or owner, or person claiming him or her, until the determination of the suit. And if such slave be out of the possession of his or her master or owner, or person claiming him or her, such slave shall enter into a recognizance, with sufficient security, to be approved of by the court, to make good to his or her master or owner, all such costs and damages, as he or she shall have incurred, in consequence of the application of such slave, for the recovery of his or her freedom, in case he or she eventually fail in substantiating the same; and that he or she will be forthcoming, and abide the judgment, sentence, or decree of the said court.

The master to enter into bond in case slave is in his possession.

Slave to enter into recognizance if he is out of his master's possion.

SEC. 77. The power vested in the circuit courts of this state, by the preceding section, to take bonds and recognizances, as aforesaid, may be exercised by a judge of the supreme court, in vacation; and if the master or owner of any slave, claiming his or her freedom, shall fail or refuse to give security, as aforesaid, the court or judge, as the case may be, shall order such slave into the custody of the sheriff, to be by him safely kept, at the expense of such master or owner, until such security be given, or until the final judgment, sentence, or decree of the court, in the premises.

Judges of the supreme court may take bonds and recognizances in vacation.

Court or judge to order slave into custody of sheriff, if the master fail to give security.

SEC. 78. If any person or persons shall be found aiding, abetting or maintaining any person in the prosecution of a suit upon a petition as aforesaid, and such person or persons shall fail to establish his, her, or their claim to freedom, every person so found aiding, abetting or maintaining, shall forfeit and pay to the owner of such slave, or to the person who shall prosecute for the same, the sum of one hundred dollars for every person so complaining; to be recovered by action of debt, in any circuit court within this state; and moreover, be liable to an action on the case for damages arising therefrom to the party grieved thereby.

Penalty on persons aiding in the prosecution of a suit for freedom, in case the plaintiff fails to establish his claim.

SEC. 79. In all cases wherein the property of a person, held as a slave, demanding freedom, shall come before a court for trial, no person who shall be proved to be a member of any society instituted for the purpose of emancipating slaves from the possession of their masters, shall be admitted to serve as a juror in the trial of the said cause.

Members of emancipation societies not permitted to be jurors in such suit

SEC. 80. It shall not be lawful for any free negro or mulatto, to emigrate to, and become a resident of this state. And if any free negro or mulatto shall come into this state to reside, contrary to the provisions of this act, and remain therein thirty days after notice given to such free negro or mulatto, to depart out of the state, it shall be lawful, and is hereby made the duty of any justice of the peace, to require such free negro or mulatto, to find good and sufficient security, in the sum of five hundred dollars, conditioned that he, she, or they will keep the peace, and be of good behavior, whilst he, she, or they remain within this state, and that he, she, or they, will leave this state, within thirty days thereafter, and will not return again within the limits thereof. And if any such free negro or mulatto shall remain in default, in finding such security, for the space of twenty days after such requisition, it is hereby made the duty of such justice of the peace, or any other justice of the peace, to cause such free negro or mulatto to be apprehended and committed to jail; and after twenty days notice thereof, to sell such free negro or mulatto, to the highest bidder, for the term of twelve months, and the proceeds of such sale, after deductiug the fees for such commitment and detention in jail, shall be paid into the county treasury of the county, where such free negro

No free negro or mulatto to emigrate to this state.

When free negro or mulatto coming into the state. may be required to find security for good behavior &c.

Or committed to jail;

And sold for twelve months.

When sale may be suspended.

or mulatto may be apprehended and sold; but such justice of the peace may, if he deem it expedient, suspend such sale, on payment of all costs and charges, and accept the security required of such free negro or mulatto; and if such free negro or mulatto shall remain within this state, thirty days after the expiration of the time for which he, she or they were sold, any justice of the peace may apprehend and deal with him, her, or them, as above directed; and again thereafter, as any such free negro or mulatto, may offend against the provisions of this act.

Free negroes and mulattoes to be registered.

Sec. 81. Every free negro or mulatto who now resides, or may hereafter lawfully reside in this state, shall be registered and numbered in a book to be kept for that purpose, by the register of the orphans court, and the age, name, sex, colour and stature of such free negro and mulatto, together with any visible mark or scar on his or her face, head or hands, and by what last will and testament, or instrument in writing, he or she was emancipated, in the manner provided by this act; or that such free negro or mulatto was born free. A copy of such register shall be delivered to the said free negro or mulatto, on application, signed by the register of the orphans' court, with the seal of office annexed, for which copy he shall be entitled to demand of said free negro or mulatto, one dollar.

To be furnished with a copy of register.

Fee therefor.

Felony for free negro or mulatto to deliver such copy of register to a slave.
How punishable.

Sec. 82. Any free negro or mulatto, who shall deliver or transfer to any slave, the copy of the register of his or freedom, signed and sealed as aforesaid, with intent to enable such slave to escape from his or her master or owner, shall, on conviction thereof, be adjudged guilty of felony, and suffer the punishment prescribed by law, for the feloniously stealing any slave or slaves.

Free negroes to have certificate of freedom registered in the county wherein they reside and obtain copy.
Penalty for employing or harboring them contrary to this act.

Sec. 83. No free negro or mulatto shall be allowed to go at large, or hire him or herself to labour in any county in this state, without having his or her certificate of freedom, registered in the office of the orphans' court of the county wherein he or she resides; and any person employing or harboring such free negro or mulatto contrary to this act, shall for every such offence, forfeit and pay ten dollars, to be recovered by warrant before a justice of the peace, by any person who will sue for the same.

Certificates to be renewed once in every three years.
Proviso.

Sec. 84 Every such free negro or mulatto shall, once in every three years, obtain a new certificate, under the same rules and regulations as are prescribed for obtaining the first; but no clerk shall renew such certificate, until the former one shall have been delivered up and destroyed, or until he shall be directed to do so by the orphans' court of the county within which such free negro or mulatto is registered, the said court having been satisfied that such former certificate has been accidentally lost or destroyed, or that such free negro or mulatto is otherwise entitled to have it renewed.

Sec. 85. In case any negro or mulatto, who resides in, or is employed to labour in any county, shall neglect to procure such certificate, it shall be lawful for any justice of the peace, in the said county, to commit to jail such negro or mulatto, there to remain until such certificate is produced, and the jailor's fees paid; or until the orphans' court of such county shall be satisfied that such certificate has been accidentally lost or destroyed, or that such free negro or mulatto is otherwise entitled to be discharged; and in case of inability or failure to do so, the said court may order such free negro or mulatto to be sold; and after paying the jailor's fees, and the expenses of such sale, the residue shall be paid into the county treasury, for the use of the poor of such county.

If negro or mulatto neglect to procure such certificate he may be committed to jail.

When such negro or mulatto may be sold.

Sec. 86. If any negro or mulatto, so registered, shall remove into another county, it shall and may be lawful for any justice of the peace, of the county or corporation, in which he or she may intrude, to issue a warrant to apprehend said free negro or mulatto; and if, upon examination, it be found, that he or she has no honest employment by which to maintain himself or herself, such free negro or mulutto shall be deemed and treated as a vagrant.

Negro or mulatto registered, removing into another county may be apprehended and treated as a vagrant.

CHAPTER 74.

An act, to alter and amend an act, entitled "An act, to reduce into one the several acts concerning slaves, free negroes and mulattoes."

Passed January 16, 1823.

Sec. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi in general assembly convened*, That if any master, overseer, or employer, shall knowingly permit or suffer any slave or slaves, not belonging to him or her, to be and remain in or about his or her, house or kitchen, or upon his or her plantation, above four hours at any one time, without leave of the owner, overseer or employer of such slave or slaves, he or she, so permitting, shall forfeit and pay ten dollars for every such offence. And every master, employer, or overseer, who shall, without such leave, permit or suffer more than five negroes, or slaves, other than those in his or her own employment, to be and remain upon his or her plantation or quarter, at any one time, shall forfeit and pay ten dollars for every such negro or slave; which said several forfeitures shall be to the informer, and recoverable, with costs, before any justice of the peace of the county or corporation where such offence is committed: *Provided, always*, that nothing herein contained shall be construed to prohibit negroes or slaves of the same owner, though seated at different quarters, from meeting, with their owner's or overseer's leave, upon any plantation belonging to such owner; nor to restrain the meeting of slaves on their mas-

Penalty for suffering slaves of others to remain about house or plantation above four hours, without leave.

Penalty for suffering more than five to remain, at any one time.

Penalties how recovered and appropriated.

Provision as to meetings on their master's business or on any lawful occasion, with his leave.

ter's, employer's or overseer's business, at any public place, nor on any other lawful occasion, by license, in writing, from their master, employer or overseer.

Meetings of slaves or free negroes with slaves, above the number of five, in places of public resort, by night, or at schools by day or night, unlawful and to be suppressed.

Sec. 2. All meetings or assemblies of slaves, or free negroes, or mulattoes, mixing and associating with such slaves, above the number of five, at any place of public resort, or at any meeting-house or houses, in the night, or at any school or schools, for teaching them reading or writing, either in the day or night, under whatsoever pretext, shall be deemed and considered an unlawful assembly, and any justice of the peace of the county or corporation wherein such assemblage shall be, either from his own knowledge, or the information of others, of such unlawful assemblage or meeting, may issue his warrant, directed to any sworn officer or officers, authorising him or them to enter the house or houses where such unlawful assemblages or meetings may be, for the purpose of apprehending or dispersing such slaves, free negroes or mulattoes, and to inflict corporal punishment on the offender or offenders, at the discretion of any such justice of the peace, not exceeding thirty-nine lashes, in the manner hereinafter directed.

Punishment of offenders.

Officer's power to summon persons to assist.

Penalty for refusal.

Provision in favor of masters permitting slaves to go to religious worship.

Sec. 3. The said officer or officers shall have power to summon any person or persons, to aid and assist in the execution of any warrant or warrants directed to him or them, for the purpose aforesaid, who, on refusal, shall be subject to a fine, at the discretion of any such justice of the peace, not exceeding ten dollars: *Provided*, That nothing herein contained shall be so construed as to prevent the master, employer, or overseer, of any slave or slaves, from giving permission in writing to his, her or their slave or slaves to go to any place or places whatever, for the purpose of religious worship: *Provided*, That such worship be conducted by a regularly ordained or licensed white minister, or attended by at least two discreet and reputable white persons, appointed by some regular church, or religious society.

Dealing with slave without leave of master or employer forbidden.

Forfeiture to master or employer.

Sec. 4. No person whosoever shall buy, sell, or receive of, to, or from, a slave any commodity whatsoever, without the leave or consent, in writing, of the master, employer, or overseer, of such slave; and if any person shall presume to deal with any slave, without such leave or consent, he or she, so offending, shall forfeit and pay to the master, or employer, of such slave, four times the value of the thing or things so bought, sold or received, to be recovered with costs, by action upon the case, in any court of competent jurisdiction within this state; and shall also forfeit and pay the further sum of twenty dollars, to any person who will sue for the same, to be recovered with costs, by warrant, before a justice of the peace, in the same manner as other debts not exceeding twenty dollars

Further forfeiture to any person who will sue for the same.

Mode of proceeding on trial of a slave, free negro or mulatto for an offence punishable with stripes at discretion of justice of the peace.

SEC. 5. Whenever any slave, free negro or mulatto shall be accused of any offence, the punishment whereof is stripes, at the discretion of a justice of the peace, it shall be the duty of the justice, before whom the accusation may be made, to summon two respectable slaveholders, not being owners, or other persons interested in the accused, forthwith to appear at a place to be by him appointed, and to lay before the said slaveholders the evidence given for and against the said slave, free negro or mulatto: and the said slaveholders and justice of the peace shall determine whether such slave, free negro or mulatto be guilty; and if guilty, the number of lashes he shall receive therefor, not exceeding the highest number prescribed for such offence by the act to which this is an amendment. And if the accused be a free person of color, and the offence of which he is accused shall be for using abusive or provoking language, the said slaveholders and justice of the peace, or a majority of them, shall determine whether the offence be aggravated or not; and if not aggravated, they shall not adjudge any lashes, on condition that he will pay a fine, to be by them adjudged against him, not exceeding twenty dollars; but if he will not pay such fine, the said slaveholders and justice of the peace shall adjudge lashes, in their discretion, in manner above prescribed.

On trial of a free person of color for using abusive or provoking language.

When court shall assign counsel to defend slave on trial for a capital offence.

SEC. 6. When any slave shall be accused, and put upon trial, for any offence for which the punishment is death, and the owner or owners, or other person or persons, having the care of such slave, shall not employ counsel to defend such slave, the court, before whom any such trial shall be depending, shall assign counsel, as heretofore, and order the owner or owners, or other person or persons as aforesaid, to pay to such counsel any sum of money not exceeding twenty-five dollars; and in case of failure or refusal to pay, to enter up judgment, and award execution therefor, in favor of such counsel.

By whom to be paid.

Repealing clause.

SEC. 7. The eleventh, seventeenth, eighteenth and twenty-second sections of the act of which this is an alteration and amendment, be, and the same are hereby, repealed; and the nineteenth section shall not be so construed as, to effect any other person or persons than those found associating with slaves, free negroes or mulattoes.

CHAPTER 75.

An act for the settlement and relief of the poor.

Passed February 10, 1807.

County court to appoint overseers of the poor.

SEC. 1. *Be it enacted by the legislative council and house of represensentatives of the Mississippi Territory, in general assembly convened,* That it shall be the duty of the justices of the county courts, in their respective counties, at their first courts, which shall be held after the passing of this act, and yearly thereafter to appoint one or more overseers of the poor in each captain's district*, to serve for the term of one whole year, or until another overseer shall be appointed; and any person so appointed, who shall refuse or neglect to serve as overseer of the poor, unless disqualified by age or infirmity, of which the justices shall judge, shall forfeit and pay fifty dollars; to be recovered with costs, by action of debt, in any court having competent jurisdiction, for the use of the county.

(*See Chap. 78 sec. 1 and 6.

Penalty on failure to serve.

Provided, That no person holding any office or employment under the government, shall be compelled to serve as overseer of the poor, so long as he holds the same. In case of the refusal or inability of any person to serve as overseer of the poor, it shall be lawful for any three justices, during the vacation of the county court, to appoint a new overseer of the poor, for the remainder of the year, in room of the said person, unable or refusing to serve; which said new overseer shall be subjected to the same duties and penalties which were obligatory upon the person appointed overseer by the county court; and every overseer so nominated and appointed, shall immediately after his nomination, take an oath, or affirmation, respectively, according to law, before any judge or justice, that he will discharge the duties of overseer of the poor truly, faithfully and impartially, to the best of his knowledge and ability.

Appointment in vacation, on refusal or inability of any person to serve.

Overseers to take oath.

Sec. 2. It shall be the duty of the overseers of the poor, each in his respective district, to provide for the indigent, lame, blind, and others not able to maintain themselves; and may also provide houses, nurses, physicians, in such cases as they shall think necessary; the expenses of which shall be provided for in the annual county levy; and it shall be lawful for the overseers of the poor to contract with any person or persons for keeping, maintaining and employing any, or all such poor persons, and take the benefit of their work, labor or service, towards their maintenance and support. If any poor person shall refuse to be lodged, kept, maintained and employed in such manner as the overseer shall direct, he or she shall be struck off from the overseer's list, and shall not be entitled to receive relief from the overseers during such refusal. The said overseers shall make fair entries in a book of the names of all the poor within their respective districts, with the time when each of them became chargeable, together with the amount of all charges, costs snd expenses incurred, under the direction of the said overseers. Which books and accounts they shall be obliged to present twice in every year, for the inspection of the justices assembled in their county courts. And if the said justices shall approve the accounts of any such overseers, they shall issue a certificate to that effect, directing the county treasurer to pay the amount thereof to such person or persons to whom the same may be lawfully due.

To provide for the poor, lame and blind.

Expenses to be provided for in the county levy.

To enter in book, names of poor, the time when each became chargable and expenses incurred.

Books and accounts to be presented to county court twice in every year.

Sec. 3. If any poor person shall suppose, that he or she is entitled to the benefit of the laws for the relief of the poor, which may have been refused by the overseer, such person may apply to the county court, or during the recess, to any two justices, who are authorised, if they shall think proper, to direct the overseer to receive him or her upon the list of the poor; which overseer is bound to yield obedience to the directions of the said court or justices.

County court may direct any poor to be put on the list.

Sec. 4. The overseers shall take measures to prevent the poor from strolling from one district into another, and may make complaint before any justice, that any poor person is come into their county, and is likely to become chargeable thereto, whereupon it shall be lawful for such justice, by warrant under his hand, to cause such poor person to be removed to the county where he or she was last settled: *Provided*, That such poor person hath not been resident for six months last past in the county from which it is proposed to remove him or her. But if such poor person be sick or disabled, and cannot be removed without danger of life, the overseer shall provide for his or her maintenance and cure, at the charge of his or her county; and after recovery, shall cause him or her to be removed: and the county wherein he or she was legally settled, shall repay all charges occasioned by the sickness, maintenance and cure of such poor person, and for removing him or her; and also all charges or expenses if such person shall die before removal; and it shall be the duty of the overseer of the district to which the person belongs, to receive and provide for the person or persons so removed; and in case of refusal, the said person or persons may apply to any two justices of the county for relief, as herein before directed. The overseer who shall have made the disbursement, being furnished with a certificate of the said expenditure, by the justices of the county court of his proper county, shall apply to the justices of the county court to which the said poor person or persons shall belong. Which said justices last mentioned, are hereby directed to draw an order on the treasurer of their proper county for the reimbursement of the said expenses.

Poor not to stroll from one district to another.

Removal of poor to the county where last settled.

Provision when removal cannot be without danger of life.

Charges of maintenance, cure and removal by whom payable.

Sec. 5. Where any dispute shall arise respecting the residence of any poor person, the court of any county adjacent, and not interested, is authorised to take cognizance thereof, and determine the same.

Disputes concerning residence of poor persons how determined.

Sec. 6. The overseers of the poor shall make returns to the county courts, twice a year, of the poor orphans in their districts, and of such children within the same, whose parents they shall judge incapable of supporting them, and bringing them up in honest ways. The said courts are hereby authorised to direct the said overseers, or either of them, to bind out such poor orphans and children apprentices, to such person or persons whom the court shall approve; until the age of eighteen

Overseers to make returns to county court twice a year of poor orphans, &c.

Court may direct them to be bound apprentices.

*See Chap. 77.

years,* if a male: or sixteen years, if a female. The person to whom such apprentice shall be bound, shall engage by a covenant, to be entered in the indenture, to provide the apprentice with a sufficiency of good and wholesome provisions, necessary clothing, washing and lodging; to teach the said apprentice the business or occupation which he pursues for a livelihood: and also to read, write, and cypher as far as the rule of three; and at the expiration of the said apprenticeship, to furnish the said apprentice with one complete new suit of clothing, and two shirts: if a female, one complete new suit of clothes and two shifts. It shall be lawful for the said court, upon the complaint of the overseers of the poor or of any apprentice, by themselves, or friends, against their masters or mistresses to hear and determine; and if it shall appear to the satisfaction of the court, that such complaint be well founded, and of sufficient magnitude to make a removal necessary, the court shall have power to remove such apprentice, and bind him or her to such other person as they shall think proper.

Court may hear and determine complaints against masters and remove apprentices.

Corporate towns to maintain poor within their limits.

SEC. 7. Any corporate town, which may now or hereafter exist within this territory, is hereby empowered and required to provide for and maintain the poor within the limits of their said town, separately and distinctly from the poor of the county; and any two magistrates of any corporation court, are hereby empowered by a warrant under their hands, to cause to be removed any poor person to the place of his or her legal residence, who hath not been resident within the limits of such town for six months last past, before such removal; and in like manner the overseers of the poor within the county may apply to any justice, who is hereby authorised and required, by warrant under his hand, to cause to be removed into any corporate town, any poor person who shall have left his usual residence in such town, and gone into the county; and the corporations of the said town are hereby empowered by a poll-tax, or by a tax on property, to levy and assess annually, upon their respective towns, all charges incurred for the support and maintenance of their poor.

Charges incurred to be defrayed by tax.

When poor persons shall be maintained by their parents, descendants, &c.

SEC. 8. The father and grand-father, the mother and grand-mother, and the descendants of any poor, old, blind, lame, and impotent person, or other person not able to work, being of sufficient ability, shall at their own charge, relieve and maintain every such poor person, as the justices shall direct at their next county court, in their respective counties, or the corporation courts in their respective towns, on pain of forfeiting eight dollars for each month they shall fail therein.

Commanders of vessels or boats, bringing persons likely to become a public charge,

SEC. 9. If any person commanding a ship, vessel or boat, shall import into this territory, or bring to the shores thereof, any infant, lunatic, maimed, aged, infirm person, or vagrant, who may be judged to become likely to be chargeable to the territory, it shall be lawful for any justice of the county court, or for any magistrate of a corporation court, to compel such person commanding such vessel, to give sufficient security to indemnify the inhabitants of this territory from any charge that may come, or be brought upon them by such infant, lunatic, maimed, aged, infirm or vagrant person, coming into, or living within this territory, or otherwise to transport such person beyond the limits of this territory.

may be compelled to give security to indemnify from such charge.

CHAPTER 76.

An act, to provide for the more effectual administration of justice.

Passed February 10, 1807.

Sec. 14. That whenever on any criminal prosecution, it shall appear to the satisfaction of the court, that there can be no reasonable expectation that the family of the prisoner will be brought up in honest courses, it shall be the duty of such court to certify the same to the overseers of the poor for the district in which such family may reside, provided the same be within the limits of the jurisdiction of such court; and the said overseers shall thereupon bind out the children of such person, to honest, respectable and virtuous citizens, for the same periods of time and under the same conditions for their instruction and maintenance, as in other cases of orphans and poor children, and return the indentures to the next county court, and likewise certify to the said superior court their doings therein.

In criminal prosecutions, if it appear that the family of prisoner will not be brought up in honest courses, court shall certify the same to overseers of the poor who shall bind out the children.

CHAPTER 77.

An act, to amend an act, entitled, An act, for the settlement and relief of the poor.

Passed December 18, 1809.

Sec. 1. *Be it enacted by the legislative council and house of representatives of the Mississippi territory, in general assembly convened*, That so much of the sixth section of the act "for the settlement and relief of the poor," as forbids the binding of male orphan children apprentices, for a longer time than till they are of the age of eighteen years, be, and the same is hereby repealed; and that hereafter it shall be the duty of the overseers of the poor, by order of the court, to bind out all male orphan children until they arrive at the age of twenty-one years, according to the directions of the said act.

Male orphan children may be bound out until the age of twenty-one.

CHAPTER 78.

An act, for the benefit of the poor of the state.

Passed February 5, 1818.

Overseers of the poor to be appointed by the county court.

To employ money for the erection of poor houses or maintenance of the poor.

Sec. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi, in general assembly convened*, That the county court of each county, shall select three good and respectable citizens of their county, for the purpose of taking care of the poor of said county, who shall be called and known as overseers of the poor; and the said overseers, or a majority of them, are hereby authorised and required to employ all the monies of their county, set apart for the use of the poor, if necessary, for the erection of poor houses, or maintenance of the poor; and a draft by any two of the said overseers, on the county treasury, shall be sufficient to draw the whole amount of money so designed, and said order shall be a good and sufficient voucher for the said county treasurer, in the settlement of his accounts.

To purchase land for erecting poor house.

To employ person to keep poor house.

Sec. 2. The said overseers may, and they are hereby required, to purchase whenever they may deem it expedient, one or more acres of land, within two miles of the court house of their county, for the purpose of erecting a poor house for the benefit of the poor, and they are authorised to employ a fit and proper person to reside in, and keep said poor house, and in all things shall be subject to the direction and control of the overseers of the poor.

May provide medicine.

Sec. 3. Said overseers may, and they are hereby authorised to lay in as much medicine as they may think sufficient for one year, to be employed in such way as they may deem best for the benefit of the poor.

May employ paupers at labor.

To account for proceeds of their labor.

Sec. 4. The said overseers may employ in labor, such paupers as may be able to work, in such way as they may think most useful, without endangering the health, or operating oppressively on said paupers; and said overseers shall keep a fair account of all such articles as may be produced by the labor of said paupers, to sell the same, and account for proceeds to the county court once in every year, at such time, and in such way as may be required by said county.

May receive donations.

Sec. 5. Said overseers, may receive by donation, any land, money or other property, for the benefit of the poor, which, when received, or promised, in writing, shall be good and valid, in law.

May contract with the president and trustees of the Natchez hospital,

Sec. 6. The overseers of the poor, for the respective counties, or a majority of them, shall be, and they are hereby authorised and empowered, from time to time, to contract with the president and trustees of the Natchez hospital, for the reception into said hospital, of the indigent, poor, lame, blind and others, not able to maintain themselves, who may be found in their county respectively, and for whom the said courts are or may be, by the existing laws, required to provide, and the said overseers respectively, are authorised and empowered to appropriate the funds, or any part thereof, set apart and provided by law, for the maintenance and support of the poor, to their support in said hospital; and the president, trustees and managers of said hospital, shall have and exercise the same powers, and perform the same duties, in relation to the poor therein, as is provided by law for the overseers of the poor, respectively: *Provided*, That the overseers of the poor that now are, or may hereafter be appointed, under the existing laws, and the laws in relation thereto, shall be and remain in force until poor houses are erected and put in operation as is directed by this act.

for reception of poor, lame and blind.

And appropriate funds for their support.

Provision respecting overseers appointed under existing laws and the laws in relation thereto.

CHAPTER 79.

An act, for the better relief of the poor of the counties therein mentioned.

Passed February 12, 1820.

Sec. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi, in general assembly convened,* That there shall be poor houses erected and built in each of the counties of Adams, Claiborne, Jefferson and Wilkinson, unless proper houses already built, can be purchased, at such convenient places in the said counties respectively, as the trustees hereinafter named shall think proper; and the justices of the county court of the said counties shall, and they are hereby required, at the time they make their annual county assessment, cause to be levied and assessed upon their counties respectively, such a sum as they may think proper and necessary, upon the suggestion of the said trustees, in addition to the sums required in the ninth section of this act, to defray the expenses thereof; which sum shall be collected by the tax collectors of said counties respectively, from the same persons, upon the same property, and at the same time as the state tax, and it shall be the duty of the said collectors to pay the same over to the treasurers of the counties respectively, who shall give bond with security to be approved of by the justices of their respective county courts, conditioned to account for and pay over to the said trustees respectively, all monies they may receive under the provisions of this act; and it shall be the duty of the said treasurers to keep a separate and distinct account of the monies so received, which shall be appropriated to no other purpose; and shall receive such compensation for their services as the said trustees may allow at the time they are required to pay the state tax; and the said treasurers shall have the same remedy and proceedings against them to enforce the payment thereof, as is

Poor houses to be built or purchased.

Sum levied to defray the expenses thereof.

To be paid to county treasurer.

Treasurer to give bond.

To keep a separate account of money so received.

Their compensation.

given by law to the auditor of public accounts for the state tax, and the said collectors and assessors shall have the same compensation for collecting and assessing the same, as is given for the collection and assessment of other county assessments.

Trustees of the poor appointed.

SEC. 2. Andrew M'Crery, John W. Bryan, Archibald Lewis, Walter Irwin and James Tooley, of the county of Adams; Randal Gibson, Malcomb Gilchrist, William M. Green, James G. Wood, and Isaac N. Selser, of the county of Jefferson; James A. Maxwell, Oran Foulk, Thomas Freeland, John Robinson (Bigland) and David Downing of the county of Claiborne; and John Joor, Joseph I. Scott, Hays G. White, Jeremiah Noland and Lovic Ventress of the county of Wilkinson, be, and they are hereby appointed trustees of the poor of their respective counties, and hereby vested with full and sufficient authority to discharge the several duties and trusts reposed in them by this act.

A body corporate.

Name.

Powers.

SEC. 3. The said trustees, and their successors, for the time being, shall for ever hereafter in name and in fact, be, and they are hereby declared a body politic and corporate in law to all intents and purposes, and shall have perpetual succession. The trustees of Adams county, by the name of trustees of the poor of Adams county, and the trustees of Jefferson county, by the name of trustees of the poor of Jefferson county; and the trustees of Claiborne county, by the name of trustees of the poor of Claiborne county; and the trustees of the poor of Wilkinson county, by the name of trustees of the poor of Wilkinson county; and by that name may sue, and be sued, plead and be impleaded, defend and be defended, answer and be answered, in all courts of judicature of this state, and by that name may purchase, take or receive by gift, grant, devise, bequest or bargain and sale, any houses, lands, tenements, rents, goods, chattels, public securities, sum or sums of money not exceeding in the whole the value of twenty one thousand dollars, which they are hereby enabled to hold to and for the benefit of the poor of said counties respectively, and that all gifts, grants, devisse, bequests or bargains and sales by deed, last will and testament, or otherwise, howsoever, shall be good and available in law, and shall pass such houses, lands and tenements, rents, goods, chattels, public securities, sum or sums of money to the said trustees, for the use of the poor of said counties, and the said trustees in their respective counties are hereby authorised and empowered to use one common seal in their business relating to the corporation, and to change and alter the same if necessary.

Vacancies may be filled by the county court.

SEC. 4. In order to keep up a perpetual succession of trustees, the county courts of said counties, respectively, shall in the case of the death, resignation, removal out of the county, or refusal to serve, of any of the said trustees or of their successors, to appoint others in their places.

Trustees to purchase house and land.

SEC. 5. The said trustees respectively, shall, and they are hereby authorised and required, to purchase in fee simple, a house and lot or lots, or a quantity of land in said counties respectively, not exceeding one hundred acres; and the said trustees are hereby authorised and required, to agree and contract with workmen, to erect and build, in the plainest and most substantial style, and in a workman-like manner, to complete and finish, on the land, when so purchased, a good and sufficient house or houses, for the reception of the poor of the said counties respectively, unless such house or houses may then be built and standing thereon.

To contract for building house on land purchased, if not then built.

To appoint overseer, and other officers, employ physician and allow them compensation.

SEC. 6. The said trustees are hereby directed and required, to meet as often, and at such time and place, as they may think proper and necessary, and shall appoint a fit and proper person, as overseer of the poor of said counties respectively: shall employ a skillful physician, and shall appoint such other proper officers and servants as they may think proper, and allow to the said overser, physician and servants, such compensation for their services as they may think reasonable and proper. They shall buy for the use of the poor of said counties respectively, sufficient working tools, beds, bedding, medicine and other necessaries, as will maintain said poor; and fully employ such of them as are able to, and compel them to work, and apply the proceeds thereof to their use.

To buy tools, medicine and necessaries for poor and employ such as can work.

To meet four times in the year.

SEC. 7. The said trustees respectively, shall, and they are hereby required, to meet at their respective poor-houses, four times in the year; in the first weeks of January, April, July and October, or oftener if necessary; and make and ordain by a majority of votes, of such as may be present, all such by-laws, rules and regulations as they may think fit, for the government and support of such poor-house: *Provided*, That the said by-laws, rules and regulations, be not contrary to the laws and constitution of this state.

Majority present may make by-laws.

No person to be received into poor house without order from a trustee.

SEC. 8. No person shall be received into the poor house of either of the said counties, without an order from any one of the said trustees thereof, directed to the overseers.

County court to levy a tax annually, sufficient to support the poor.

SEC. 9. The county courts of the said counties respectively, shall, and they are hereby required annually, at the time they are required by law to make their annual county assessment, to levy and have assessed and collected, for the current year, such sum or sums of money, as shall be sufficient to maintain and support the poor inhabitants of said county in the poor house; to be collected by the tax collectors of said counties, as other county rates and levies may be then directed to be levied and collected; and the said sums shall be paid unto the said trustees respectively by said collectors, at the time they are required to pay the state tax; and in case of default, the same remedy and proceedings shall be, and the same is hereby given to

To be collected by tax collector and paid to trustees.

Remedy in case of default.

said treasurers as are given by law to the auditor of public accounts.

Trustees may rent house for the reception of the poor &c.

SEC. 10. The said trustees of the said counties respectively be, and they are hereby authorised to rent a house or houses, in some convenient and healthy part of said counties, for the reception of the poor, to be paid for out of such monies as may be then in the county treasury of the proper county, on the order of said trustees; and the said trustees shall proceed to the appointment of an overseer, employ a physician, if necessary, and other officers and servants, and do and perform every other thing that may be necessary to carry the said act into execution; and the allowance to such physician, overseer and servants, and every thing necessary for the support of the poor, until the poor house be bought or erected, shall be paid in like manner out of the county treasury of the proper county.

Majority may do business.

SEC. 11 A majority of said trustees shall be sufficient to do business under this act.

Trustees to take oath.

SNC. 12. The said trustees, before they enter on the duties of their office, shall take and subscribe the following oath before some justice of the peace, of the said counties respectively, to wit:

Form of oath.

I, A B, do swear, or affirm, (as the case may be) that I will discharge the duties and trust committed to me, as a trustee of the poor of the county of ——— faithfully and justly, according to the best of my skill and understanding, so help me God.

Trustees and overseers exempt from militia duty.

SEC. 13. The said trustees and overseers shall be exempt from militia duty, except in cases of rebellion or invasion, patrole duty and serving on juries, during their continuance in office.

Accounts to be settled annually.

SEC. 14. The said trustees of the said counties respectively, shall annually at the first or second term of the county court of said counties respectively, to be held in each year, settle and adjust their accounts with the said courts.

Repealing clause.

SEC. 15. All acts and parts of acts, coming within the purview and meaning of this act, be, and the same are hereby repealed.

CHAPTER 80.

An act, to amend an act, entitled, An act, for the better relief of the poor of the counties therein mentioned.

Passed February 7, 1821.

Trustees of poor to order poor children to be bound out.

SEC. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi in general assembly convened*, That the trustees of the poor, of the several counties named in the act to which this is an amendment, shall order the overseer of the poor, of the proper county, to bind out such poor orphans and of such poor children within the same, whose parents they shall judge incapable of supporting and bringing them up in honest ways, apprentices to such persons as the said trustees shall approve, until the age of twenty-one, if a male, and eighteen, if a female, and the person to whom such apprentice should be bound, shall engage by a covenant, to be entered into, to provide the apprentice with a sufficiency of good and wholesome provisions, necessary clothing, washing and lodging; to teach said apprentice, the business or occupation which he or she pursues for a livelihood, and also to read, write and cypher as far as the rule of three; and at the expiration of said apprenticeship, to furnish the said apprentice with one complete new suit of clothes and two changes of linen.

Power in case of improper treatment.

SEC. 2. In all cases of improper treatment of an apprentice, the same power is hereby vested in the said trustees respectively, as is given by law to the county courts.

Poor persons received into poor house to deliver inventory of property to trustees.

SEC. 3. Any poor person, hereafter received into any poor house, shall make an inventory, and deliver upon oath, to the said trustees respectively all the goods, chattels and effects and debts due, which he or she may be in possession of, and owing to him or her, at the time of application for admission, and which shall be applied by the said trustees, towards his or her support in the said poor house.

CHAPTER 81.

An act, further to amend the several acts for the relief of the poor.

Passed November 27, 1821.

Trustees of poor, how governed in binding out orphans

SEC. 1 *Be it enacted by the senate and house of representatives of the state of Mississippi in general assembly convened*, That in the counties wherein trustees of the poor have been or shall be appointed, any one trustee shall have power to bind out such poor orphans as are directed by law to be bound as apprentices in their respective counties, and such trustee shall act and govern himself by the laws in such cases made and provided, so far as they may be applicable to the provisions of this act.

County court to allow certain claims.

SEC. 2. The county courts of the counties of Adams, Claiborne, Jefferson, and Wilkinson, be, and are hereby authorised and required to examine, audit and allow, as far as they deem right, the claims of persons in said counties respectively, who have taken care of, fed, clothed, administered to and buried such indigent and poor persons as were, at the time such services were rendered, proper subjects for, but who could not be safely removed to the poor house; and such paupers as were not provided for, between the time of the passage of the act, entitled "an act, for the better relief of the poor of the counties therein mentioned," and the time when said act went into actual operation and effect; all which allowances shall be provided for by said county courts respectively, in the annual levy of county taxes, by the said courts to be made.

Construction of former act.

SEC. 3. All the provisions of the ninth section of the above recited act shall be construed so as to include all poor, indigent and sick persons who have no means of support or maintenance, found in any of the counties mentioned in said act, and who properly belong to no other county in this state, any thing in said act to the contrary notwithstanding.

SEC. 4. *(Repealed, January 9, 1823.)*

Commissioners of poor houses to furnish clerk of county court an account of expenditures.

Clerk to publish account.

Penalty for neglect.

SEC. 5. It shall be the duty of the commissioners of the several poor houses to furnish the clerks of the county courts, respectively, with a correct account of the expenditures and disbursements of all monies used and employed for the poor of their respective counties at least once in every six months; and it shall be the duty of the clerks of said county courts to publish the said accounts in one gazette of the state, in ten days thereafter, to be continued for four weeks; for neglect of this duty the commissioners shall be fined by the county court in the sum of twenty dollars for each commissioner, on the motion of any person making the same; and for neglect of the clerk, he shall be fined in the sum of one hundred dollars, on motion as aforesaid.

CHAPTER 82.

An act, to establish a literary fund, and for the encouragement and support of education in this state.

Passed November 26, 1821.

Escheats, confiscations, fines, forfeitures and derelict personal property, appropriated to encouragement of learning.

SEC. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi in general assembly convened,* That all escheats, confiscations, forfeitures and all personal property accruing to the state as derelict, and having no rightful owner, which may accrue from and after the thirteenth day of December, one thousand eight hundred and twenty-one, be, and the same are hereby appropriated to the encouragement of learning;

and all fines, pecuniary penalties and forfeitures, which may hereafter be recovered of any person or persons, for the violation of any penal statute, or for any other crime or misdemeanor, in any court in this state; except such fines, penalties and forfeitures as are otherwise particularly appropriated, shall be paid into the treasury of the state, and also appropriatd to the encouragement of learning: *Provided*, That nothing herein contained shall be construed to affect the rights of informers, or of persons prosecuting popular or qui tam actions, or of persons suing for penalties appropriated by law to the party injured.

Exception.

Saving rights of informers, *qui tam* prosecutors and persons injured.

Sec. 2. (*Repealed January* 17, 1823. *See chap.* 83, *sec.* 1.)

Sec. 3. The auditor of public accounts shall be, and he is hereby required to open an account, to be designated the *literary fund*, to which he shall carry every payment made or to be made on account of any of the said escheats, taxes, confiscations, forfeitures, fines and penalties, herein above appropriated to the encouragement of learning.

Auditor to open account, designated Literary Fund.

Sec. 4. When any person shall die intestate, as to his goods and chattels or any part thereof, and after the payment of funeral charges, debts and just expenses, there shall be no person entitled to take the residuum under the laws of this state, directing the distribution of intestates' estates, such undisposed of residuum shall in no case go to the executor or administrator of the person so dying; but the same shall vest in the state for the use and benefit of the literary fund, and may be recovered by bill in equity, in any court having jurisdiction thereof: *Provided*, That nothing in this act contained, shall be so construed, as to affect the right of the husband to the personal estate of his wife dying intestate. When any suit shall be instituted in behalf of the state, for the purpose of recovering such undisposed of residuum, it shall be the duty of the court to cause publication to be made for three months in some newspaper published in this state, and in some newspaper published at the seat of government of the United States, setting forth the nature of the action, the name and nativity of the deceased person, and requiring of all persons claiming an interest therein, as distributees of the deceased, to appear and make themselves defendants on a given day of some succeeding term. If no person shall appear accordingly and show a sufficient title in himself, the court shall decree the undisposed of residuum to the state, for the benefit of the literary fund. At any time after such decree shall have been pronounced, any person not a party thereto, claiming title as distributee of the deceased, shall be permitted to appear and make himself party to the suit, file his answer and have his claim discussed and decided according to the rules and practice of the court. If, upon final hearing of the cause, it shall appear that such person is justly entitled to the whole, or any part of such undisposed of residuum, it shall be decreed to him accordingly, but without interest or costs, and shall be refunded to

Residuums of intestates' estates, where no distributees, shall go to literary fund.

How recoverable.

Provision as to husband's right in wife's estate.

Publication to be made.

Decree, if no person appear and shew title.

Persons claiming as distributees may afterwards appear and defend suit.

Decree on final hearing.

him out of any monies in the treasury accruing for the benefit of the literary fund.

President and Directors of Literary Fund incorporated.

(*Repealed with respect to attorney general, presiding judge of supreme court, and chancellor. See Chap. 83, sec. 3.)

Their corporate powers.

What to constitute board

Governor to be president.

Clerk and other officers.

Annual report to general assembly.

SEC. 5. All sums of money which may accrue to the literary fund, in consequence of the appropriations thereto already made, or hereafter to be made shall be, and the same are hereby vested in the following persons, viz. the governor, lieutenant-governor, secretary of state, *attorney-general*, treasurer, *presiding judge of the supreme court*, and *chancellor of the state*,* for the time being, together with three persons to be chosen by joint ballot of the general assembly: *Provided nevertheless*, The discretion of choosing the said three persons, shall be determined by a joint resolution of the senate and house of representatives, and they and their successors are hereby constituted, a body corporate and politic, under the denomination of the "President and Directors of the Literary Fund," with power to sue and be sued, plead and be impleaded, and to hold lands, tenements, goods and chattels, and the same to sell, dispose of or improve, for the purposes hereafter mentioned. And the said president and directors, or any three of them, shall have power to constitute a board for the transacting of all business relative to said fund; of which board when present, the governor shall be president, and they shall have power to appoint a clerk, from without their own body, and such other officers as they may deem necessary, and make such rules and regulations for the better ordering of their proceedings as to them may seem meet: *Provided*, They be not inconsistent with the constitution and laws of this state. And the said president and directors shall report to the general assembly once in every year, the state of the funds committed to their charge, with such recommendations with regard to the improvement thereof, as to them shall seem advisable; and they shall also, annually, report to the general assembly, the actual condition of all seminaries of learning, and schools throughout the state, and recommend such measures for their improvement as they may deem expedient.

Agents in each county.

Their duty.

Sheriff may collect fines, &c. as heretofore.

SEC. 6. For the more speedy and certain collection of the literary fund throughout the state, the said president and directors are authorised and required to appoint in each county therein, an attorney or agent for the collection of the funds of that county, who shall act without any fee or emolument, and whose duty it shall be to report to the president and directors, from time to time, such portion of the said fund, as any officer appointed to collect the same, may have collected and failed to pay into the public treasury, or such portion thereof as may be uncollected in the hands of any person, and if no other mode of recovery be provided by law, to authorise proper actions to be instituted for the recovery thereof, in the name of the said president and directors, the costs of which shall be defrayed by the said president and directors, out of the literary fund: *Provided*, That nothing in this act shall be construed to prevent the sheriffs and assessors and collectors, of the respective counties, from collecting such fines, taxes and other sums of money, as they are by law authorised and required to collect and account for.

Warrants on treasury by authority of president and directors.

SEC. 7. The auditor of public accounts, shall be authorised and required at all times hereafter, to issue warrants on the treasury, to satisfy orders drawn by the authority "of the president and directors of the literary fund," for the payment of money, not exceeding the sum appropriated by law to the said fund, at the date of such orders.

Fund may be vested in bank stock.

SEC. 8. The said president and directors shall be, and they are hereby empowered to vest in the stock of any bank or banks in this state; any part or the whole of the literary fund; or to loan the money, at the rate of interest to be agreed on, between the said president and directors, and the person or persons borrowing the same, and on good and sufficient security being given for the payment of principal and interest; and at all times to change or alter, or dispose of any real or personal estate belonging to the said fund, in such manner, as may in their opinion be best calculated to improve the value thereof.

Or loaned on good security.

Real and personal estate how disposed of.

Fund how appropriated.

Distribution restricted.

SEC. 9. The said literary fund shall, from time to time, be divided and appropriated, as to the legislature shall seem best adapted to the promotion of literature; but no distribution of the principal and interest of said fund, except so much as may be necessary for the education of the poor of the respective counties, shall be made, until the same shall amount to fifty thousand dollars: *Provided, always*, That the aforesaid fund when distributed, shall be appropriated to the sole benefit of a school or schools, to be kept in each and every county within the state, subject to such orders and regulations, as the general assembly shall hereafter direct. And whereas, the object aforesaid is equally humane, just, and necessary, involving alike the interests of humanity, and the preservation of the constitution, laws and liberty of the good people of this state; the present general assembly solemnly protest against any other application of the said funds, by any succeeding general assembly, to any other object than the education of the poor, until the interest accruing on said fund, shall be more than sufficient for that purpose; in which case the surplus may be distributed for the use of schools as the legislature shall direct.

Protest against any other application of fund.

School commissioners when and how to be appointed.

SEC. 10. For the purpose of duly applying the income of the literary fund, to the primary object of its institution; it shall be the duty of the president and directors of the literary fund, within sixty days after the passage of this act, or as soon thereafter as may be, to appoint not less than five, nor more than ten discreet persons, to be called school commissioners, for the counties in which they may be appointed respectively, and shall moreover, notify such commissioners of their appointment. The said commissioners for the counties respectively, or a ma-

Notice of appointment.

Their meetings when and where held.
Notice thereof.
Board of commissioners how constituted.
Treasurer to be appointed.
To give bond and security.
Powers of commissioners.
Poor children how to be sent to school and what to learn.

jority of them, shall hold their meetings at the court house of their respective counties, on the first Monday of September, annually, and they shall hold such extra meetings at the places aforesaid, as they may deem necessary to be convened, at any time, on the application of any number of the said commissioners, not less than a third part of the whole, reasonable notice thereof having been first given by advertisement at the door of the court house, on some court day. A majority of the whole number of commissioners, shall be at all times necessary to form a board for the transacting of business, or to adjourn, except from day to day, but any smaller number may adjourn from day to day; the board may adjourn from time to time as they may think proper. The said commissioners shall annually appoint one of their own body treasurer, who, before he shall be entitled to receive any money by virtue of his office, shall give bond and good security in the court of the county in which he may be appointed, payable to the president and directors of the literary fund, in the penalty of two thousand dollars: *Conditioned*, for the faithful application and accounting for all monies, which may come to his hands by virtue of his office; which bond shall be filed, and recorded in the office of such court; the said commissioners shall have power to determine what number of poor children they will educate, what sum shall be paid for their education, to authorise each of themselves to select as many poor children as they may deem expedient; and to draw orders upon their treasurer, for the payment of the expense of tuition, and of furnishing such children proper books and materials, for writing and cyphering. The poor children selected in manner aforesaid, shall with the assent of the father, or if no father, of the mother, of such children respectively, or if no mother, with the assent of the guardian, be sent to such school as may be convenient, to be taught reading, writing and arithmetic.

Treasurer's duties.
Accounts to be rendered annually to president and directors of literary fund.

SEC. 11. The said treasurer shall pay all monies which may come to his hands, in virtue of his office, to the order of the said commissioners, or of such of them as shall have been authorised at their lawful meetings to draw upon him; and shall annually, render an account of his receipts and disbursements, supported by proper vouchers, to the said commissioners, who shall examine the same, and after correcting all errors, which may be found therein, shall return the same to the president and directors of the literary fund; and whenever such treasurer shall go out of office, he shall pay over any balance, which may be in his hands to his successor.

Clerk to commissioners.
Vacancies how filled.
Compensation to treasurer and clerk.

SEC. 12. It shall, and may be lawful for the said commissioners to appoint one of their own body as clerk; to fill all vacancies created by death, resignation. or removal; to make such allowance to their treasurer and clerk, each, as they may deem reasonable for his services, and to authorise their treasurer, to pay their own reasonable expenses, incurred in attending their meetings.

Committee to be annually appointed to visit seminaries of learning. Their duty.

Sec. 13. It shall be the duty of the said commissioners, once in every year to appoint a committee from their own body, to visit all seminaries of learning, academies and common schools, within their respective counties; who shall examine into the capacity, and qualifications of the teachers or school masters, to educate their pupils in the branches of learning, taught in such schools, and also their character for morality and sobriety; the discipline and order observed in such schools; the number of scholars and how far they are advanced in education; and to report the same to the president and directors of the literary fund, annually, at least thirty days before the stated meetings of the general assembly; and no school master shall be permitted to take charge of a seminary of learning in this state, who shall not produce to the president and directors of the literary fund, testimonials that he is a citizen of the United States, and qualified to teach the Greek and Latin languages, and that he is of good moral character: *Provided*, That it shall not be required, that the teacher of a common school, shall be qualified to teach the Greek and Latin languages.

Qualifications of teachers.

Duties required of teachers.

Sec. 14. It shall be the duty of the president and directors of the literary fund, and of the school commissioners of the several counties, to require all preceptors, teachers and other instructors of youth, to take diligent care, and to exert their best endeavors, to impress on the minds of children and youth, committed to their care and instruction, the principles of piety, justice and a sacred regard to truth, love to their country, humanity and universal benevolence, sobriety, industry and frugality, chastity, moderation and temperance, and those other virtues, which are the ornament of human society; and the basis upon which the republican constitution is structured. And it shall be the duty of such instructors to endeavor to lead them under their care, as their ages and capacities will admit, into a particular understanding of the tendency of the before mentioned virtues, to preserve and perfect a republican constitution; and to secure the blessings of liberty, as well as to promote their future happiness.

Annual appropriations for education of the poor when and how payable.

Sec. 15. The president and directors of the literary fund, shall annually pay to each of the said treasurers, or order, upon the production of a certificate, from the proper clerk, that he has given the bond required by this act, such sum as may be certified, by the school commissioners of each county, to be necessary for the education of poor children in such county.

Treasurer's bonds how suable.

Sec. 16. The bonds given by the treasurers, may be put in suit, in the name of the president and directors of the literary fund, for their benefit, or for the benefit and at the costs of any person or persons, who may sustain injury by a breach of the

Remedy by motion against them and securities for delinquency.

condition thereof. And if any treasurer appointed under the authority of this act, or his executors, administrators or other personal representative, shall, at any time, when duly required thereto, fail to pay any money, received by such treasurer by virtue of his office, it shall be lawful for the commissioners of schools, in the name of the president and directors of the literary fund, or for the said president and directors in their own name, by motion, on ten days previous notice, in any court of record having jurisdiction thereof, to recover a judgment, and have execution for such money with the *ten per cent. per annum* damages thereon, from the time of such failure till payment together with costs, against the said treasurer and his securities, jointly and severally, or against the executors, administrators or other personal representative of such treasurer, or his securities, or any of them: and the money made upon such judgment or execution, shall be paid to the order of the board of commissioners, or of such person as they shall have authorised to receive it, pursuant to the provisions of this act

How lands reserved by U: States for use of schools in this state may be leased.

Proceeds how applied.

SEC. 17. The president and directors of the literary fund shall be, and they are hereby vested with full power and authority to lease for any term of years, which they may deem most advisable, all lands reserved by the United States, for the use of schools within this state, and the proceeds arising from the lands so leased, shall be applied under the direction of the school commissioners of each county, to the building of school houses, in the townships wherein the lands reserved as aforesaid, are situated: and the surplus which may remain, after building the necessary school houses, shall be appropriated under the direction of the president and directors of the literary fund, to the education of the poor, and the encouragement of learning in each township, in which such surplus may accrue.

Leases to be made under superintendance of an agent.

Notice to be given.

SEC. 18. The leases aforesaid, shall be made under the superintendance and direction of an agent, to be appointed by the president and directors of the literary fund, who shall give at least thirty days notice, in the most convenient newspaper printed in this state, or by advertisement at three of the most public places in the county, of the time and place of leasing the lands aforesaid.

Agent to take bond and security that lessee will not commit waste, etc.

Also bond and security for payment of rent.

SEC. 19. The agent appointed to lease said lands, shall take bond and approved security, from the lessee or lessees, payable to the president and directors of the literary fund, in such penalty as the said president and directors shall order, with condition that no unnecessary waste or damage shall be committed or done on the lands so leased, during the continuance of such lease: and also, bond with approved security, payable as aforesaid, for the payment of the annual rent, for which the lands aforesaid may be leased; which bonds shall be deposited by said agent, in the office of the auditor of public accounts, where they shall be safely kept and preserved, and may be put in suit, for a breach of the condition thereof, by the said president and directors, in any court of competent jurisdiction.

President and directors to institute suits for trespass on lands.

And for recovery of lands.

SEC. 20. It shall be the duty of the president and directors of the literary fund, to institute suits in their corporate capacity, against any person or persons who may trespass in any manner on the lands aforesaid; and, if under any claim, or pretended claim, any person or persons shall take possession of any section, half section, quarter section, or fractional section of land, reserved by congress for the use of schools within the township where the same is situated, which, in the opinion of said president and directors, is not paramount to the title which existed in the United States at the date of such reservation, it shall be the duty of the said president and directors to cause the proper action to be brought, as aforesaid, for the recovery of the land so taken possession of, under such claim or pretended claim.

Repealing clause.

SEC. 21. The act, entitled "an act, to provide for the lands given by the United States, to the state of Mississippi, for the benefit of schools;" passed the fifth of February, one thousand eight hundred and eighteen, and the act to amend the same, passed February twelfth, eighteen hundred and twenty shall be, and the same are hereby repealed.

CHAPTER 83.

An act, amendatory to an act entitled "an act to establish a literary fund, and for the encouragement and support of education in this state."

Passed January 17, 1823.

Second section of original act repealed.

SEC. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi, in general assembly convened,* That the second section of an act entitled "an act to establish a literary fund, and for the support and encouragement of education in this state," passed on the twenty-sixth day of November, in the year eighteen hundred and twenty-one, shall be, and the same is hereby, repealed.

Money paid as taxes for literary fund, to be returned to counties from which it was collected.

SEC. 2. All money which has been collected and paid, or which may hereafter be collected and paid, into the treasury, as taxes, for the use and benefit of the literary fund, shall be returned to the counties respectively from which it was collected; and the auditor of public accounts is hereby required to issue his warrant on the treasury of the state, in favor of the treasurers of the respective counties, when applied to for that purpose, for so much money as may belong to the counties respectively, according to this act.

Repealing clause.

SEC. 3. So much of the fifth section of the act, to which this is an amendment which provides for the appointment of the attorney-general, presiding judge of the supreme court, and chancellor of the state, as members of the body politic and corporate, under the denomination of "the president and directors of the literary fund," be, and the same is hereby, repealed.

CHAPTER 84.

An act, to establish a college in the Mississippi territory.

Passed May 13, 1802*.

(*Amended March 4, 1803 and February 10, 1807.)

Whereas, education conduces to the happiness and improvement of man, and is particularly necessary to the support and purity of republican government; therefore,

College established.

Name.

SEC. 1. *Be it enacted by the legislative council and house of representatives of the Mississippi territory in general assembly convened*, That there shall be established in this territory, a college, which shall bear the name of JEFFERSON COLLEGE, in honor of Thomas Jefferson, president of the United States, and president of the American Philosophical Society.

Trustees of Jefferson college incorporated.

SEC. 2. The following persons, to wit: Willliam C. C. Claiborne, Anthony Hutchins, William Dunbar, of second creek, Benjamin Farar, William Vousden, John Ellis, David Ker, Adam Bingaman, David Lattimore, Bernard Lintot, Cato West, John Girault, Thomas M. Green, Samuel Gibson, Daniel Burnet, Felix Hughes, Alexander Montgomery, Drury W. Brazeale, Thomas Calvit, James Caller, Nathaniel Christmas, John Steele, Abner Green, Sutton Banks, Abram Ellis, Richard Butler, Robert Dunbar, John MacGrew, Jacob Stampley, Joseph Pannill, Isaac Guillard, John Bisland, Abraham Green and James Hoggatt, shall be a body corporate, by the name of "the trustees of Jefferson college;" and by that name shall be capable in law to receive all donations, and recover all debts which may become the property of the said college; and may in general do all acts for the benefit of the institution which are incident to bodies corporate.

Meeting of trustees.

President and vice-president to be chosen.

Quorum how constituted.

Who to preside.

SEC. 3. The first meeting of the trustees shall be held on the first Monday in January next, at the town of Washington; where they shall proceed to choose, out of their own body, a president and vice-president. The president, or in his absence the vice-president, shall have power to call extraordinary meetings of the trustees, by giving ten days notice to each member, before such meeting shall be held. The ordinary meetings of the board shall be held on their own adjournments. Thirteen members shall constitute a quorum to do business at the first meeting, but at all subsequent meetings, seven may constitute a quorum to proceed to business. The president, or in his absence from the meeting the vice-president, shall preside: or in case of the absence of both, any member chosen by a majority of the membsrs present, shall preside.

Whereas, it is necessary, that on extraordinary occasions, the board of trustees of Jefferson college should be called together at a short notice; and whereas, the mode provided for that purpose would often be attended with great delay; therefore,

Meetings called.

Notice.

Be it enacted, That the president of the board of trustees of Jefferson College, or in his absence from the territory the vice-president, shall have authority to call a meeting of the said trustees at any time; provided notice shall be given of such intended meeting, by advertising the same in one of the newspapers of this territory, twelve days before the said meeting shall be held.

Powers and duties of trustees.

SEC. 4. The board of trustees shall have power, and it shall be thier duty, with all convenient speed, to fix on some healthy and central situation, whereat to establish the college, and to contract for the erecting of the necessary buildings. They shall also have power to engage a president, and other professors; a treasurer, and all necessary officers for conducting the civil and literary concerns of the college; and to displace and supersede them at pleasure. They also shall have authority, and it shall be their duty to examine the proficiency of the students, and to confer the degrees of bachelor and master of arts; to make all laws and regulations which they shall judge necessary for the good government of the college, and for promoting morality and virtue among the students. They shall take effectual care, that students of all denominations, may, and shall be admitted to the equal advantages of a liberal education, and to the emoluments and honors of the college; and that they shall receive a like fair and generous treatment, during their residence thereat.

Vacancies how filled.

SEC. 5. In case of death, removal from the territory, resignation or refusal to act, of any of the trustees, the board may, at any of their meetings, appoint a successor.

Money may be raised by lottery.

Donations received.

Names of donors to be preserved.

SEC. 6. As Jefferson college must for the present be supported by the voluntary contributions of the citizens, the board of trustees are authorised to raise, for the benefit of the said college, by a lottery, a sum not exceeding ten thousand dollars. They shall also collect donations from the citizens of the territory, and elsewhere. The names of such donors, with their donations annexed, shall be inscribed in a book kept for that purpose; and shall be preserved among the archives of the college; in order that posterity may know who were the benefactors of the institution.

President, professors, tutors and students, exempt from militia duty.

SEC. 7. The president, professors, tutors, and students of the college, shall be exempt from all militia duty during their continuance as members of the college, except in a general invasion of the territory.

Property of college free from taxes.

Sec. 8. The lands, public buildings, and other property belonging to Jefferson college, are hereby declared to be free from every kind of public tax.

CHAPTER 85.

An act, to establish a permanent site for Jefferson college.

Passed November 11, 1803.

Whereas, the board of trustees of Jefferson college have by their petition, dated the twenty-fifth of July last, prayed the legislature to establish by law, the site of Jefferson college in such position as is set forth in the said petition:

Site of Jefferson college established at Washington.

Sec. 1. *Be it therefore enacted by the legislative council and house of representatives of the Mississippi territory in general assembly convened*, That a certain donation of a parcel of land, including a spring commonly called Elicott's spring, presented by John and James Foster and Randal Gibson, to the said board of trustees of Jefferson college, for the use of the said college, and such other adjoining parcel of land, to be procured by the said board, situated in the vicinage of the town of Washington, shall together constitute a lot; within the limits of which shall be erected the buildings of the said college; and which said lot is hereby declared and established to be the permanent site of Jefferson college.

CHAPTER 86.

An act, to amend an act, to incorporate the trustees of Jefferson college.

Passed December 23, 1812.

Quorum of trustees of Jefferson college to be a body corporate.

Sec. 1. *Be it enacted by the legislative council and house of representatives of the Mississippi territory in general assembly convened*, That a quorum of the board of trustees of Jefferson college, named in the second section of the act to which this is an amendment, and such other members of the said board, as have been duly elected, or hereafter may be elected, conformably to the fifth section of said act, to which this is an amendment, and their successors be, and they are hereby declared to be a body corporate, and politic, capable in law to do and perform all acts and things incident to bodies corporate, both in law and equity.

Number of trustees limited.

Sec. 2. The board of trustees of Jefferson college, shall at no time exceed forty in number, and the said board shall at their discretion, proceed to elect members to make up that number.

Trustees may establish stated meetings.

Sec. 3. The trustees of said college shall have power, and they are hereby authorised to establish stated meetings of the said board.

CHAPTER 87.

An act, to amend the act, entitled, An act, to establish a college in the Mississippi territory.

Passed December 13, 1816.

Loan to Jefferson college.

SEC. 1. *Be it enacted by the legislative council and house of representatives of the Mississippi territory, in general assembly convened,* That for the purpose of aiding Jefferson college in carrying on the operations of the institution, the sum of six thousand dollars shall be, and the same is hereby loaned to said college for the term of five years, to be paid to the president of the said college, in four equal annual instalments, to wit: one thousand five hundred dollars on the first day of January, 1817, 1818, 1819, and 1820, which money shall be used by the college in the employment of one or more teachers or professors for the institution; and it shall be the duty of the territorial treasurer to take from the trustees of the college, under the seal of the college used in their corporate name, bond in double the amount of each of said instalments, payable to the governor of the Mississippi territory, and his successors in office, conditioned for the payment of said instalments respectively in five years from the date of said bond, and also a mortgage to secure the payment thereof, on such real estate of the said college as the said treasurer may require; and it shall also be the duty of said treasurer to cause said bonds and mortgages to be proven and recorded in the office of the register of the orphans' court of the county of Adams, immediately after the execution of such bonds and mortgages respectively, and thereafter to keep the same among the papers of the treasury; which bonds and mortgages shall be put in suit by the said treasurer on the breach of the condition thereof, in any court of competent jurisdiction. And there is also hereby given and granted to the Greene academy, and the St. Stephen's academy, each the sum of five hundred dollars, to be paid out of the territorial treasury, on the auditor's warrant, which warrant he is hereby required to issue on the order of the president of said academies respectively.

When to be paid.

How to be applied.

Bond for the payment.

Also mortgage on real estate.

To be proved and recorded.

Kept at treasury.

How put in suit.

Donations to the Greene and St Stephens academies.

When failure of trustees to attend meetings of board shall be deemed refusal to act.

SEC. 2. If any trustee shall fail to attend the said board for four stated meetings in succession, it shall be deemed and considered a refusal to act as such, within the meaning of this act, and the board shall proceed to appoint a successor to such trustee: *Provided,* That the provisions of this section shall not extend to any trustee who at the time of such failure be sick and unable to attend, or temporarily absent from the territory.

Annual report to general assembly.

SEC. 3. It shall be the duty of the president of the said board of trustees for the time being, to report annually to the general assembly at the commencement of the session, the state and condition of the college, and the amount of active funds in the possession of the corporation at the time of making such report.

CHAPTER 88.

An act, to authorise a loan of money to the trustees of Jefferson college.

Passed February 12, 1820.

Loan to Jefferson college.
For five years.
How applied.
Bond for the payment.
Also mortgage on real estate.
To be proved and recorded.
To be kept at treasury.

SEC. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi, in general assembly convened,* That the sum of four thousand dollars at an interest, at the rate of six per centum per annum, shall be and the same is hereby loaned to the trustees of Jefferson college, for the term of five years, which money shall be used by the said trustees, in completing the left wing of said college; and the said sum shall be paid to the president of said board, by the treasurer of the state, upon his executing a bond under the seal of the college, used in their corporate name, in the sum of eight thousand dollars, payable to the governor of the state and his successors in office, conditioned for the payment of the said sum of four thousand dollars, with interest as aforesaid, in five years from the date of said bond; and also, a mortgage to secure the payment thereof, on such real estate of said college, as the said treasurer may require; and it shall be the duty of said treasurer, to cause said bond and mortgage to be proven, and recorded in the office of the clerk of the county court for the county of Adams, immediately after the execution thereof, and thereafter to keep the same among the papers of the treasury.

CHAPTER 89.

An act, to establish a college in the town of Shieldsborough.

Passed January 31, 1818.

Hancock college established.

SEC. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi, in general assembly convened,* That there shall be established in the town of Shieldsborough, in Hancock county, a college, which shall bear the name of Hancock college.

Trustees to be a body corporate.
(*See Chap. 90 sec 1.)
Corporate powers.

SEC. 2. The following persons, viz. Thomas Shields, E. W. Ripley, A. R. Ellery, Elihu Carver, William H. Crocker, P. Gilley, John R. Heirn, Belon Dedaux, Noel Jourdan and Powhatan Ellis, shall be a body corporate and politic, by the name of the trustees of Hancock college,* and by that name shall be capable in law, to receive all donations, and recover all debts, which may become the property of said college, and may in general, do all acts for the benefit of the institution which are incident to bodies corporate and politic.

Meetings.

SEC. 3. The first meeting of the trustees shall be holden on the first Monday in May next, at the court house of Hancock county, when they shall proceed out of their own body, to choose a president and vice-president, and in case a sufficient number of trustees should not attend at the time appointed for the first meeting, then, and in that case, it shall be in the power of any three members, to call a meeting of the trustees aforesaid, giving notice by advertisements, put up at three or more public places in the town, at least five days before the time of the meeting. The president, or in his absence, the vice-president, shall have power to call all extraordinary meetings of the trustees, by giving notice as aforesaid: the ordinary meetings of the board shall be held on their own adjournment; five members shall constitute a quorum to do business, at the first meeting, but all subsequent meetings, three shall constitute a quorum to proceed to business:* the president, or in his absence the vice-president, shall preside, or in case of the absence of both, any member chosen by a majority present shall preside.

President and vice-president to be chosen.

Quorum how constituted.

(*See Chap. 90 sec. 1.)

Who shall preside.

SEC. 4. The board of trustees shall have power and authority to fix on some convenient situation, within the limits of the town, whereat to establish the college, and to contract for erecting the necessary buildings: they shall also have the power to engage a president, and other professors, and all other officers necessary for conducting the civil and literary concerns of the college, and to displace and supersede them at pleasure; they shall have power and authority to examine the proficiency of the students, and to make all laws and regulations they may think necessary for the good government of the college, and for promoting morality among the students.

Board may fix on situation and contract for erecting buildings.

May engage officers and displace them at pleasure.

May examine proficiency of students and make laws.

SEC. 5. In case a member should die, remove from the county, resign or refuse to act, the board may at any meeting appoint a successor.

Vacancies how filled.

SEC. 6. The lands, public buildings and other property, belonging to the college, are hereby declared to be free from all kinds of taxes.

Property of college free from taxes.

SEC. 7. The trustees be, and they are hereby authorised, by way of a lottery, for the benefit of said college, to raise a sum, not exceeding four thousand dollars on such scheme or plan, as they may deem most advisable.

Money may be raised by lottery.

CHAPTER 90.

An act, in addition to an act, entitled, An act, to establish a college in the town of Shieldsborsugh.

Passed January 29, 1819.

SEC. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi, in general assembly convened,* That in future, the number of trustees of Hancock college, shall consist of not more than twenty one, whereof eleven at least shall

Number of trustees.

Quorum.

be inhabitants of the said state; and five shall constitute a quorum for the transaction of business.

Trustees may raise money by lottery.

Sec. 2. The said trustees be, and they are hereby authorised, to raise by way of a lottery, a sum not exceeding twenty thousand dollars for the use of said college, on such scheme or plan, as they may deem most advisable.

Repealing clause.

Sec. 3. So much of the act, to which this is a supplement, as confines the number of trustees to ten, be and the same is hereby repealed.

CHAPTER 91.

An act, to regulate the admission of physicians and surgeons, to the practice of medicine and surgery in the state of Mississippi.

Passed February 12, 1819.

Board of medical censors.

Sec. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi in general assembly convened*, That there shall be a board of medical censors, formed in the state of Mississippi, for the purposes of granting licenses, to practise medicine and surgery in said state.

How appointed

Sec. 2. The said board of censors, shall consist of seven members, to be appointed by the governor of the state, and to hold their appointments during good behavior.

Their duty.

Sec. 3. It shall be the duty of said board of censors, to grant licenses to practise medicine and surgery to applicants therefor, upon satisfactory evidence of qualification being produced to the board, giving due weight to usual credentials, reputation established by experience and the test of examination before the board.

Members to be notified of appointment.

Sec. 4. It shall be the duty of the governor of the state of Mississippi, to appoint the members of said board of censors, as soon as convenient after the passage of this act, to notify the members of their appointment, and of the time and place of the first meeting of the board.

Board to establish rules.

Sec. 5. It shall be the duty of said board of censors, at their first meeting to adopt rules and regulations for their government, and to establish the method of receiving evidences of qualification and granting licenses. The board shall have the power of filling vacancies that may happen after the first formation of the board of censors.

May fill vacancies.

Charges for medical services not recoverable, unless

Sec. 6. Charges for medical services shall not be recoverable in any court of law or equity in this state, after this act shall be carried into operation, unless the person rendering said services, were furnished at the time, with a license from the said board of medical censors to practise medicine in the state of Mississippi.

Person rendering services was licensed.

Sec. 7. To prevent delay and inconvenience, a single member of the medical board of censors, may grant temporary licenses to applicants therefor, and make report thereof to the board at their next meeting, for confirmation or further evidence of qualification to be given by the applicant: *Provided*, That a temporary license, shall not continue in force longer than the next meeting of the board, and that a temporary license shall in no case be granted by a censor, after the applicant has been refused a license by the board of censors.

Temporary licenses when granted and how long to continue.

Sec. 8. It shall be the duty of the governor of the state of Mississippi, in making the appointment of the members of the medical board of censors, to appoint persons of established skill and reputation in that profession; four of whom at least shall be selected from different counties in this state.

Persons of skill to be appointed members of the board. Four at least from different counties.

Sec. 9. Two thirds of the members of the medical board of censors shall have power to expel a member under the previous provisions of this act.

Expulsion of members.

Sec. 10. The board of medical censors, shall hold two stated meetings in each year in the city of Natchez, to wit, on the first Monday in January and July.*

Stated meetings. (*See Chap. 93 sec. 4.)

Sec. 11. Each person licensed by the said board, to practise physic or surgery, shall at the time of receiving his license, pay to the said board the sum of ten dollars, for the purpose of defraying the expenses incident to said board.

Fee for license.

Sec. 12. The said board shall enter in a book to be kept by them for that purpose, the names of each and every person they shall license to practise physic or surgery, and the time of granting the same, together with the names of the members of the board present, and shall publish the same in some newspaper, printed in the city of Natchez, within thirty days after granting the same.

Names of persons licensed to be entered in book, &c.

And published.

Sec. 13. The said board shall at their first meeting in each year, appoint out of their own body, a president and secretary, to continue in office for the term of one year.

President and secretary to be appointed annually.

Sec. 14. All licenses to practise medicine and surgery or either, shall be signed by the president of the said board, and countersigned or attested by the secretary thereof, except the temporary licenses.

Licenses how signed.

CHAPTER 92.

An act, to prevent the empirical practice of physic and surgery in this state.

Passed February 12, 1820.

Penalty for practising as physician and surgeon without license.

SEC. 1 *Be it enacted by the senate and house of representatives of the state of Mississippi in general assembly convened*, That if any person or persons in this state shall, from and after the time this act takes effect, presume to set him or themselves up as a physician or surgeon, and shall positively practice, without having previously received a license from the board of medical censors, organised in conformity to "An act, to regulate the admission of physicians and surgeons to the practice of medicine and surgery in the state of Mississippi," passed the twelfth day of February, 1819, he or they shall, for every such offence, and on conviction thereof, pay a sum not exceeding five hundred dollars, recoverable before any court having competent jurisdiction of the same.

Mode of proceeding for recovery of penalty.

SEC. 2. It shall be lawful for any person having a knowledge of any such offence, to lodge complaint thereof on oath, in the clerk's office of the superior court in the county where the person so offending may reside; and it shall be the duty of said clerk on information being so filed, to issue a writ requiring the appearance of such offender, before the next superior court, to be holden in and for the county where such offence may have been committed, and the said clerk shall endorse on said writ, that bail is required for five hundred dollars, and it shall be the duty of the sheriff to take bail accordingly.

Prosecutor entitled to one half.

The other paid into county treasury.

SEC. 3. Any person prosecuting an offender to effect, under the provisions of this act, shall be entitled to one half of any money collected by virtue of the same, and the other half shall be paid into the county treasury where the same may be collected, for county purposes.

Medical censors when and where to meet.

SEC. 4. The board of medical censors shall, after the passage of this act, meet twice in each year, at such times as the president may direct, whose duty it shall be to publish the same at least sixty days previous to such meeting, in some one newspaper in the city of Natchez, any law to the contrary notwithstanding.

Commencement.

SEC. 5. This act shall not take effect, until after the first Monday in April next.

CHAPTER 93.

An act, to establish an additional board of medical censors, for the state of Mississippi.

Passed February 10, 1821.*

(*Revived January 17, 1823: See Chap. 94, sec. 1.)

Preamble.

Whereas, applicants for licences to practise physic and surgery, from the eastern section of this state, are subjected to serious inconvenience from the distance they have to travel to the place appointed by law for the meeting of the medical board of censors, heretofore established—Therefore

Additional board to be appointed.

SEC. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi in general assembly convened*, That the governor be, and he is hereby authorised and required to appoint five respectable physicians, reputed for their skill and moral character, as medical censors, and the censors so appointed, shall compose the eastern board of medical censors, for the state of Mississippi.

SEC. 2. (*Repealed January* 17, 1823. *See Chap.* 94, *Sec.* 2.)

Powers of board.

SEC. 3. The said board or a majority of them, shall grant licenses, fill vacancies, and do and perform all and singular, such things as have been prescribed by law, for the government of the medical board of censors heretofore established.

CHAPTER 94.

An act, reviving an act appointing an additional board of medical censors.

Passed January 17, 1823.

Act revived.

SEC. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi in general assembly convened*, That the act establishing "an additional board of medical censors for the state of Mississippi," passed February 10th, 1821, which was inadvertently repealed by an act approved June 30th, 1822, be, and the same is hereby, revived.

Medical censors heretofore appointed continued.

Time and place of meeting.

SEC. 2. Medical censors, then appointed by the authority of the above recited act, be, and they are hereby, continued under the name and style of "The Eastern Board of Medical Censors;" and the said censors shall meet twice in each year, at the town of Jackson, at such period as they or a majority of them shall appoint, giving two months previous notice thereof in one or more of the public newspapers of this state.

CHAPTER 95.

An act, to reduce into one the several acts, concerning the organization and discipline of the militia of this state, and to repeal the laws heretofore enacted on that subject.

Passed June 20, 1822.

Militia to form two divisions.

First division.

Second division

SEC. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi, in general assembly convened,* That the militia of this state shall form two divisions, and each be commanded by one major general. The regiments of Hinds, Warren, Claiborne, Jefferson, Adams, Franklin, Covington, and Lawrence counties, shall compose the first division. The regiments of Wilkinson, Amite, Pike, Marion, Hancock, Jackson, Greene, Perry, Wayne and Monroe counties, shall compose the second division.

Each division to consist of two brigades.

SEC. 2. Each division shall consist of two brigades, and each brigade shall be commanded by one brigadier general. The regiments of Hinds, Warren, Claiborne and Jefferson, shall compose the first brigade of the first division: the regiments of Franklin, Adams, Lawrence, and Covington, shall compose the second brigade of the first division. The regiments of Wilkinson, Amite, Marion and Pike, shall compose the first brigade of the second division: the regiments of Hancock, Jackson, Green, Wayne, Perry and Monroe, shall compose the second brigade of the second division.

Regiments numbered.

SEC. 3. The regiments shall be numbered as follows: the militia of Warren county, shall be called the first regiment; that of Claiborne, the second regiment; that of Jefferson,* the third regiment; that of Adams, the fourth regiment; that of Wilkinson, the fifth regiment; that of Amite, the sixth regiment; that of Franklin, the seventh regiment; that of Lawrence, the eighth regiment; that of Pike, the ninth regiment; that of Marion, the tenth regiment; that of Wayne, the eleventh regiment; that of Green, the twelfth regiment; that of Jackson, the thirteenth regiment; that of Hancock, the fourteenth regiment; that of Covington, the fifteenth regiment; that of Perry, the sixteenth regiment; that of Monroe,* the seventeenth regiment; and that of Hinds, the eighteenth regiment.

(*See Chap. 96

Officers of each regiment.

Regiment divided into battalions and companies.

Officers and privates of companies.

SEC. 4 Each regiment shall be officered by one colonel, one lieutenant colonel, and one major, who shall divide the same into battalions, to be numbered the first and second battalions; and a sufficient and proper number only of companies: each company shall consist of not less than forty privates, and be officered by a captain, one first lieutenant, one second lieutenant, one ensign; and one sergeant and one corporal to every sixteen privates.

Sec. 5. The several staff departments shall be organised as follows: In the adjutant general's department there shall be appointed an adjutant general, with the rank of colonel; a brigade inspector, with the rank of major; and to each regiment, an adjutant with the rank of first lieutenant. In the quarter master general's department, there shall be appointed a quarter master general, with the rank of colonel; to each brigade, a brigade quarter master, with the rank of captain; and to each regiment, a regimental quarter master, with the rank of first lieutenant. In the hospital department there shall be appointed one regimental surgeon to each regiment. To each brigade, there shall be appointed a brigade judge advocate, with the rank of major; and to each regiment, a regimental judge advocate with the rank of captain. The commander in chief may appoint four aids-de-camp, with the rank of lieutenant colonel; a major general two aids, with the rank of major; and a brigadier general one aid, with the rank of captain. The commanding officer of each regiment may appoint, during his pleasure, by warrant under his hand, one sergeant major, one quarter master sergeant, one drum major and one fife major.

Staff: In the adjutant general's department.

In the quarter master general's department

In the hospital department.

Brigade and regimental judge advocate.

Aids de camp.

Sergeant major quarter master serjeant, drum and fife major.

Sec. 6. The chief of each department, including the brigade judge advocate, shall under the direction of the commander in chief, have command over all subordinate officers in his department, and shall, from time to time, issue orders and instructions for their government and practice; and shall prepare and transmit, at the expense of this state, all needful blank forms of returns, precepts, warrants and proceedings, in their respective departments.

Chief of each department to be under direction of the commander in chief, and to have command over subordinate officers.

To prepare forms.

Sec. 7. The commanding officer of each regiment, with the approbation of the commanding officer of his brigade, may alter the bounds of the several battalions under his command, and the commanding officer of battalions, with the approbation of the commanding officer of his regiment, may divide or alter the bounds of the several companies under his command.

Bouuds of battalions and companies how altered.

Sec. 8. All appointments in the militia of this state, not herein otherwise provided for, shall be made in the following manner, to wit: All company officers shall be elected by privates of their respective companies, and all free white males, entitled to vote for members of the general assembly, residing within the company beat; and the election for such officers shall be held on the next succeeding muster day, after the vacancy shall have occurred, and shall be conducted under the superintendence of the commanding officer of the company, for the time being, except he be a candidate to fill the vacancy, and in that case three freeholders shall be appointed by him for that purpose; and all elections shall be held after the company shall have been mustered, but before it is discharged; and the votes shall be given by ballot, and certified to the colonel of the regiment, who shall transmit the same to the adjutant general, and

Manner of electing officers in the militia.

Company officers.

Return of the votes.

New election in case of fraud.

If vacancy be not filled by election within three months, governor to fill the same by appointment.

Election of colonel, lieutenant colonel and major.

commissions shall be granted by the governor, to the persons having the greatest number of votes: *Provided*, That in case any fraud shall have intervened in conducting such election, it shall be the duty of the colonel, or commanding officer of the regiment, on satisfactory evidence of the fact, to order a new election, at such time and place as he shall designate: *And provided also*, That if a vacancy shall not be filled by election as aforesaid, within three months after it shall have occurred, the appointment to fill the same shall be made by the governor, on receiving information from the colonel or commanding officer of the regiment, of the omission of the company to elect according to the provisions of this act. And for the election of a colonel, lieutenant colonel, or major, all the enrolled militia of each regiment, and all free white male citizens entitled to vote for members of the general assembly, shall meet at the several places provided for holding elections for members of the general assembly, and there, under the inspection of a justice of the peace or quorum, or two freeholders, proceed to the election; and it shall be the duty of the commander of the regiment to order some one captain of his regiment to attend at each place of election, to nominate the managers, and see that the order for election be carried into execution; and it shall be the duty of the managers to make a correct list of the candidates, with the number of votes for each, and forward the same to the brigadier, who shall make a consolidated return to the commander in chief, who shall commission the person having the greatest number of votes; and it shall be the duty of the colonel to designate the commands of the lieutenant colonel and major: and each major general, adjutant general, and quarter master general, shall be chosen by the joint vote of both houses of the general assembly; and each brigadier general by the commissioned officers of the brigade, who shall vote by ballot in their respective regiments, and the several elections shall be held at the court house of each county, on such day as the major general of the division shall appoint, and continue open from ten o'clock in the morning until four o'clock in the afternoon of the same day, and shall be conducted under the superintendence of the colonel, unless he be a candidate, to fill the vacancy: in which case he shall appoint three freeholders for that purpose; and the returns of all elections for brigadier general, shall be made to the adjutant general; and the governor shall grant a commission to the person having the greatest number of votes.

Return of the votes

Colonel to designate the commands of lieutenant colonel and major.

Election of major general, adjutant general and quarter master general.

Of brigadier general.

Return of the votes.

Appointment of brigade judge advocate, inspector and quarter master.

Of regimental judge advocate, adjutant, quarter master and surgeon.

SEC. 9. The officers attached to the staff of the militia of this state, hereinafter mentioned, shall be appointed in the following manner, to wit: One brigade judge advocate, one brigade inspector, and one brigade quarter master, to be appointed by the brigadier general of the brigade to which they belong; one regimental judge advocate, one regimental adjutant, one regimental quarter master, and one regimental surgeon, to be appointed by the colonel in each regiment respectively, and commissioned by the executive.

SEC. 10. The resignations of all company, regimental, field, and staff officers, shall be offered to the commanding officer of the regiment to which they respectively belong: all commanding officers of regiments, general, field, and staff officers of brigade, shall be offered to the commanding officers of the brigade, to which they respectively belong; and all commanding officers of brigades, general, field, and staff officers of division, shall be offered to the commanding officer of the division to which they respectively belong; and all other officers who are not included in this section, shall offer their resignations to the commander in chief. In every instance where a resignation is offered, it must be forwarded to the office of the adjutant general, together with the reasons assigned for such resignation. And no officer will be considered as out of service, until he is notified of his resignation being accepted by the commander in chief.

Resignations to whom offered.

To be forwarded to the office of the adjutant general.

Officer not out of service until notified that his resignation is accepted.

SEC. 11. Every officer of the militia now in commission, or who may hereafter be appointed, who shall serve for the term of five years from the date of his commission, and produce a certificate of his honorable discharge from the officer next his superior in command, shall be thereafter exempt from militia duty, except in time of war, insurrection or invasion. The commanding officer of each company, shall from time to time enroll all able bodied free white male citizens between the ages of eighteen and forty five years, and within the limits of his command: and the age and ability to bear arms of every such person so enrolled, shall be determined by the commanding officer of each company, with the right of appeal to the regimental court martial: *Provided*, That the said commanding officers of companies shall not enroll for the purpose of muster, or require military service from those exempted by the laws of the United States, nor from the following persons, viz: Judges of the state, the treasurer, auditor of public accounts, the secretary of state, the lieutenant governor, the attorney general, regularly licensed ministers of the gospel, according to the rules of their sect, teachers and students in all colleges and in the several academies, justices of the county court and keepers of public ferries and toll bridges: *Provided also*, That the members of the general assembly, clerks of courts, sheriffs, coroners, keepers of weights and measures, assessors and collectors of taxes, inspectors of flour and other provisions, practising physicians, justices of the peace, keepers of the public jails, keepers of the public mills, and commissioners of roads, shall be and they are hereby exempt from ordinary militia duty, but not from draft for actual service.

Officers honor-discharged after a service of five years, exempt from duty, except in time of war.

Male citizens between eighteen and forty-five years of age to be enrolled.

Age and ability to bear arms how determined.

Persons exempt from militia duty.

Persons exempt from ordinary militia duty, but not from draft for actual service.

SEC. 12. Every person so enrolled and notified, shall within three months thereafter, provide himself with a good musket, rifle or shot gun, unless such person make oath before a justice of the peace for the county in which he resides, that he cannot procure the same without impoverishing himself or family; and all commissioned officers shall, within six months after the

Time allowed persons enrolled to provide themselves arms.

Officers to equip themselves

within six months after the receipt of their commissions.

To take oath.

receipt of their commissions, arm and equip themselves, according to the rules and regulations prescribed for the government of the militia of this state: and each officer, before he enters on the duties of his office, shall take and subscribe an oath to support the constitution of the United States, and of this state; and also to conduct himself in an officer-like manner, and, that he will faithfully and impartially execute the duties of his office to the best of his ability; which oath shall be sworn and subscribed before a justice of the peace for the county in which such officer resides, and shall be endorsed on his commission.

Time and manner in which the militia shall rendezvous.

SEC. 13. The militia of this state shall rendezvous by companies in their respective beats, on four several days in each year, on the order of the commandant of the company, and by battalions at, or as near the centre of the battalion limits as may be convenient; the first battalions on the first Saturday, and the second battalions on the second Saturday in the month of April in each and every year, at ten o'clock in the forenoon, for the purpose of training, disciplining, and improving in martial exercise; and also once in every year by regiments, at such time and place within their respective districts, as the commanding officer of the brigade shall direct, according to the provisions of this act, for the purpose of inspection, review, and martial exercise; and at such other times and places, either by regiment, battalion or company as the commanding officer of the brigade shall direct, for the purpose of carrying into effect any order of the commander in chief, for calling into the service of this state, or of the United States, the whole or any part of the militia, in obedience to any law of the United States, or for the defence of this state, or to aid in the execution or maintenance of the laws of this state.

Companies of cavalry and light infantry, grenadiers, artillery and riflemen which have not thirty privates equipt as the law directs, shall be disbanded.

SEC. 14. Every troop or company of cavalry, every company of light infantry, grenadiers, artillery and riflemen, which shall not at any inspection and review, have at least thirty privates mounted, or armed and equipt as the law directs, either present on parade, or absent, and conclusively proved by oath, so to be mounted, or armed and equipt, shall be immediately reported by the inspector, or officer acting as such, to the commanding officer present, who shall thereupon without delay, disband the said troop or company, in orders, and give notice thereof to the commander in chief; and the commissioned and non-commissioned officers, musicians and privates, of such troop or company, shall be returned into the ranks, and enrolled in the company within whose beat they respectively reside.

Companies of cavalry to be subject to the orders of the superior officers of the regiment in which

SEC. 15. All companies or troops of cavalry at present organised, or that may hereafter be organised within this state, shall be and remain under the command, and subject to the orders of the commandant of the regiment, in which the commanding officer of such company shall reside, and of the superior officers thereof, and shall attend all regimental musters of the regiment in which the commanding officer of such company shall reside, as aforesaid, and shall, in all other respects, conform to the rules and regulations established for the government of the said regiments.

the commanding officers of such companies shall reside. To attend regimental musters.

Duties of a major general.

Sec. 16. It shall be the duty of each major-general, to arrest any brigadier-general within his division, against whom charges may be exhibited, and to order for his trial a court martial, according to the provisions of this act; to obey all orders that he may receive from the commander in chief; to make returns of the strength and condition of his division so often as the same may be required by the commander in chief; to order an election for brigadier-general, whenever a vacancy shall happen in any brigade within his command, giving at least thirty days notice thereof to the commanding officers of the respective regiments, and to perform every other duty appertaining to his office, for the advancement of good order and discipline.

Duties of a brigadier general.

Sec. 17. It shall be the duty of the brigadier-generals, annually, to order regimental musters in their respective brigades, on such days as they shall think proper, and give twenty days notice thereof to the commanding officers of regiments, which muster shall be held at some convenient place suitable for the purpose of field exercise, as near as may be to the centre of their respective regiments. They shall attend every such muster, and review the regiment, and shall have power to arrest any colonel, lieutenant-colonel or major, within their respective brigades, against whom charges may be exhibited, and to order a court martial for the trial of such officers, according to the provisions of this act. They shall detail a brigade court martial, which shall convene at, or as near the centre of their respective brigades as may be convenient, once in each year, to assess fines on field officers of regiments, and hear appeals from inferior courts martial, of which they shall give at least thirty days notice to the members detailed for such court, and make return of all delinquents in their brigades respectively, to whom the like notice shall be given. They shall from time to time, make returns of the strength and condition of their brigades to the major general of their respective divisions; obey all orders which they may receive from their superior officers, and perform every other duty which relates to the general advancement of good order and discipline. And it shall be the duty of the brigadier generals, to order elections to fill all vacancies that may occur in their respective brigades, of colonel, lieutenant colonel and major.

Duties of the commanding officer of each regiment.

Sec. 18. It shall be the duty of the commanding officer of each regiment, to give at least ten days notice through his adjutant, of the time and place of a regimental muster, to every commissioned officer of his regiment; he shall in like manner notify the commissioned and non-commissioned officers and musicians of his regiment, to attend at the place for holding such muster two entire days previous thereto; at which time and place he shall attend, and with the assistance of the adjutant, instruct such officers, non-commissioned officers and musicians, according to the rules of military discipline established by law; and on the next succeeding day, he shall drill and muster his regiment; and in case his adjutant should be absent, or otherwise unable to discharge this duty, he shall have power and authority to order any officer within his command to perform the same, who shall receive the same fees and compensation, and out of the same fund, as the adjutant would have been entitled to receive for the same service, on a certificate from the president of the court martial and the commanding officer of the regiment; he shall call out his regiment or any part thereof in case of alarm; he shall obey all orders directed to him from his superior officers; he shall have power to arrest all captains and subalterns of his regiment against whom charges may be exhibited, and to order for their trial a court martial, to be organised as hereinafter directed; he shall detail a regimental court martial twice in each year, to assess fines on commissioned officers, and hear appeals from company courts martial, of which he shall give at least twenty days notice to the members detailed for such court, and make a return to them of all delinquents in his regiment, to whom the like notice shall be given; and he shall execute all other duties of commanding officer of a regiment, relative to the advancement and preservation of good order and discipline.

Duties of lieutenant colonel and major.

SEC. 19. It shall be the duty of the lieutenant colonel and major, to execute all orders from a superior officer. The lieutenant colonel shall command the first battalion, and the major the second battalion, of the regiment to which they belong; they shall return to the regimental court martial the delinquent officers commanding companies in their respective battalions; they shall respectively furnish the colonel of their regiment, when required, with a return of the strength and condition of their battalions; they shall attend all regimental and battalion musters, and perform all other duties necessary to the advancement of good order and discipline.

Duties of captain, lieutenant and ensign.

SEC. 20. It shall be the duty of the captain, first lieutenant, second lieutenant and ensign, of each company, to execute all orders from a superior officer; they shall attend all company, battalion and regimental musters. It shall be the duty of the commanding officer of each company, to furnish the commanding officer of their respective battalions, when required, a return of the strength and condition of their companies; he shall give at least five days notice, by a proper non-commissioned officer, of every company, battalion or regimental muster, to his subalterns and privates; he shall detail a company court martial once in every three months, to sit on days of the muster, to assess fines on non-commissioned officers, musicians and privates, of which he shall give at least five days notice to the members detailed for such court, and cause to be made to them, a return of all delinquents in his company, to whom the like notice shall be given; he shall return to the regimental court martial the delinquencies of his subalterns, and shall perform every other duty which relates to the general advancement of good order and discipline of his company.

Duties of the adjutant general.

Sec. 21. The adjutant general shall keep his office at the seat of government; he shall keep a register of the commissioned officers of the militia of the state, their resignations and promotions; he shall distribute all orders from the commander in chief to the several corps; he shall attend all public reviews when the commander in chief shall review the militia, or any part thereof, and shall obey all orders from him relative to carrying into execution and perfecting the system of military discipline established by this act; he shall furnish blank forms of different returns that may be required, and explain the principles on which they shall be made; he shall receive from the several officers of corps throughout the state, returns of the militia under their command, reporting the actual situation of their arms, delinquencies, and every other matter which relates to the general advancement of good order and discipline; which returns the several officers of divisions, brigades, regiments and battalions, are hereby required to make in the usual manner, so that the adjutant general may be duly furnished therewith; from all of which returns he shall make proper abstracts, and lay the same annually before the commander in chief, or either house of the general assembly, when required so to do He shall receive as a compensation for his services an annual salary of ——* dollars, to be paid quarter yearly, out of the treasury of the state, and shall be allowed his account for postages paid on official letters, to be audited and paid out of the contingent fund.

*See Chap. 101

Postage on his official letters paid out of the contingent fund.

Duties of brigade inspector.

Sec. 22. It shall be the duty of the brigade inspector to attend once in every year, the regimental musters of the militia composing their several brigades, during the time of their being under arms, to inspect their arms, ammunition and accoutrements; to make returns to the adjutant general of the state, once in every year, of the militia of the brigade to which he belongs, reporting therein the actual condition of the arms of the several corps, and their advancement, respectively, in good order and military discipline, and every other duty which in his judgment, may relate to the proper organization and government of the militia.

Duties of regimental adjutant.

Sec. 23. It shall be the duty of the regimental adjutant to attend all field musters in the regiment, and prepare the regiment, or battalion for review and inspection; he shall keep a register of the commissioned officers of the regiment, their resignations and promotions, and of the strength and condition of each company; he shall obey all orders from his superior officers, and serve in person all notices directed to him, on the officers of the regiment; he shall keep a record of all general, regimental and battalion orders; he shall keep a register of every officer and private detailed or drafted for actual service, and forward a complete muster roll of them to the adjutant general; he shall furnish the captains of company with blank forms of the different returns that may be required; he shall furnish, annually, the brigade inspector of the brigade to which he belongs, with a complete return of the strength and condition of his regiment, according to companies and battalions.

Duties of quarter master general.

SEC. 24. It shall be the duty of the quarter master general to take charge of, and carefully preserve all ordnance, carriages, muskets, bayonets, swords, knapsacks, rifles and fire arms, stores and munitions of war whatsoever, belonging to the state, and which may be deposited at the seat of government, and to issue the same as the commander in chief may at any time order; to keep a regular account of all such, and such as may be issued, and make return thereof, to the commander in chief, or to either house of the general assembly, when thereto required.

Duties of brigade quarter master.

SEC. 25. It shall be the duty of the brigade quarter master carefully to preserve, and keep a regular account of all ordnance, arms, stores and munitions of war whatever, in his hands and belonging to the state, and make returns thereof to the quarter master general, when thereto required.

Duties of regimental quarter master.

SEC. 26. It shall be the duty of each regimental quarter master to attend all regimental musters, and all drills of commissioned officers, in his regiment; he shall receive from the adjutant, all monies for fines, collected in his regiment, and shall account once in each year, with the regimental court martial for the same; he shall, on order in writing from the colonel or commanding officer of his regiment, purchase such number of stands of colors, drums and fifes, as the commander of [illegible] regiment shall, from time to time direct, and pay for the same out of any monies in hands belonging to the regiment; he shall, on order in writing from the president of the regimental [illegible] martial, pay out of the amount of fines collected, the allowance made by such court to the adjutant of his regiment; he shall carefully preserve, and keep a regular account of all ordnance, arms, stores, and munitions of war in his possession and belonging to the state, and make returns thereof to the quarter master general, when thereto required, and to issue the same, when directed by him so to do; and he shall give sufficient security to the colonel of his regiment, for the faithful performance of the duties of his office, and shall retain ten per cent. on the amount of the fines collected, as a compensation for his services.

To give security for the performance of his duties.

Compensation.

Duties of regimental surgeon.

SEC. 27. It shall be the duty of the regimental surgeon, to attend all field musters of his regiment, and to do and perform all other duties appertaining to his office.

Duties of brigade judge advocate.

SEC. 28. It shall be the duty of each brigade judge advocate to attend all brigade courts martial, held within his brigade; he shall administer necessary oaths to the president and members thereof, witnesses, and all other persons to whom the same may be proper; it shall be his duty to note down the testimony of witnesses, arrange in proper form all proceedings and sentences of such courts, and to do and perform all other duties belonging, or in any wise appertaining to his office.

Duties of regimental judge advocate.

SEC. 29. It shall be the duty of each regimental judge advocate to attend all regimental courts martial of his regiment; he shall administer the necessary oaths to the president and members thereof, witnesses, and all other persons to whom the same may be proper; it shall be his duty to note down the testimony [illegible] witnesses, arrange in proper form all proceedings and sentences of such courts, and to do and perform all other duty belonging, or in any wise appertaining to his office.

Additional oath to be taken by a judge advocate.

SEC. 30. Every judge advocate appointed as directed by this act, shall, when he receives his commission, in addition to the other oaths required by law, take the following, viz: "I, A. B. do swear that I will not, on any account, or at any time whatever, disclose or discover the vote or opinion of any particular member of any court martial whereof I may act as judge advocate, unless required to give evidence thereof as a witness, by a court of justice, in due course of law; and that I will not divulge the sentence of any such court, until the same shall be approved or disapproved, in cases where the law requires an approval or disapproval;" and every special judge advocate shall take the said oath in substance, before the president of the court martial for which he is appointed to act.

Non-commissioned officers and musicians appointed by the commanding officer of each company.

SEC. 31. The commanding officer of each company shall appoint, by warrant under his hand, the non-commissioned officers and musicians of his company, who shall respectively serve as such, for one year from the time of their appointment.

Commanding officer of each company shall issue his order to non-commissioned officers to warn persons liable to bear arms.

SEC. 32. For the purpose of warning the non-commissioned officers, musicians and privates, to any parade or place of rendezvous required by law, the commanding officer of each company shall issue his order under his hand, to his non-commissioned officers respectively, or to such of them respectively, as he may deem convenient and proper, requiring them respectively to warn all persons liable to bear arms, within a certain district to be designated in such order, or all persons named in said order, as the said commanding officer may elect, to appear at such parade or place of rendezvous, armed and equipt as the law directs; and such non-commissioned officer shall warn all persons therein required, by reading the said order, or stating the substance thereof in his hearing, or in case of his absence, by leaving a notice thereof under his hand at the usual place of abode, with some person of suitable age and discretion, or af-

Manner of warning.

Non-commissioned officer to make return.
To make oath to the truth of such return.
Return good evidence of warning.
Commissioned officer of a company may warn persons liable to bear arms, without order.
His certificate legal evidence of such warning
Commanding officer to return non-commissioned officers for neglect of duty.

fixing the same on the outer door of the house, in case no such person can be found at home; and the said non-commissioned officer shall make return thereof to his said commanding officer, therein stating the names of all persons by him warned, and the manner of warning them, respectively, and make oath to the truth of such return before his said commanding officer, who is hereby authorised and directed to administer and certify the same on such order, and deliver the same, with his return of all delinquents and delinquencies to the commanding officer, or adjutant of his regiment; and such return, so sworn to and certified, shall be as good evidence to prove such warning, as if the said non-commissioned officer were personally present at the trial of any person by him warned, and had sworn to the same before a court martial; and, any commissioned officer of a company, without order, may warn any or all the persons liable to bear arms within the beat of said company, to appear at any parade or place of rendezvous as aforesaid, and his certificate thereof, upon honor, shall be received by any court martial as legal evidence of such warning; and the said commanding officer of company shall make the like return upon honor, and with the like effect, of every delinquency and neglect of duty of his non-commissioned officers, either in not attending on parade, or in not executing the order aforesaid, and returning the same, or in not obeying the orders of his commanding officer.

Court martial for the trial of a major general, adjutant general or quarter master general, by whom ordered and of what to consist.
Judge advocate to administer oath to the members.
Form of the oath.
President of the court-martial to direct adjutants to summon delinquents and parties accused.

Sec. 33. Every court martial for the trial of a major-general, adjutant general, or quarter master general, shall be ordered by the commander in chief, and shall, if for the trial of a major general, consist of nine commissioned officers, one of whom at least shall be a general officer, and three at least of the rank of colonel, any seven of whom shall constitute a quorum; if, for the trial of an adjutant general or quarter master general, shall consist of seven commissioned officers, two of whom at least shall be of the rank of colonel; and on the first assembling of said courts martial, the brigade judge advocate, or in case of there being no brigade judge advocate present, then such judge advocate as the president of such court shall, for the time being, appoint, shall administer to each member of such court, then appearing, and afterwards to other members of such court, who may thereafter appear, the following oath, to wit: "You do swear that you will well and truly try and determine, according to evidence, the matters now depending between the state of Mississippi and the persons to be tried; and you do further swear, that you will not upon any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of the said court, unless required to give evidence thereof by a court of justice, in due course of law." And further, the said president shall direct any regimental adjutant or adjutants within the division that such court may be organised, either before or after he shall have been sworn as aforesaid, to summon all delinquents and parties accused to appear before such court at the time and place appointed; and the said adjutant or adjutants shall make the like return, and with the like effect, as commissioned and non-commissioned officers are authorised and required to make, in cases of warning to a company or regimental parade or rendezvous, and shall be subject to the like penalties for neglect of duty therein, as is by this act provided for non-commissioned officers.

Adjutants to make return.

Sec. 34. All courts martial ordered for the trial of commissioned officers below a major general, not otherwise provided for by this act, shall, if for the trial of a brigadier general, consist of seven commissioned officers, two of whom at least, shall be of the rank of colonel, and none below the rank of major, any five of whom shall constitute a quorum; and if, for the trial of any regimental, field or staff officer, brigade, staff or any company officer, such court shall consist of seven members, two of whom at least, shall be of equal rank with the person accused, and the same oath shall be administered, and all other proceedings shall be conformable to those laid down in the preceding section for the trial of a major general.

Court martial for the trial of commissioned officers below major general, of what to consist.

Oath, &c.

Sec. 35. Every commissioned officer may be arrested for disobedience of orders, neglect of duty, unofficerlike conduct and behavior, disrespect to a superior officer, or any other unmilitary or ungentlemanly conduct whilst on duty, and brought to trial before a court martial, on proper charges and specifications being filed, who may on conviction, sentence him to be cashiered, and incapacitated from holding any military commission in the militia of this state, and may impose a fine not exceeding one hundred dollars, or may sentence him to any part of said punishment and penalties, or to be reprimanded as the said court martial shall think proper; and the proceedings and sentence of every court martial for the trial of such offence, shall without delay, be delivered to the officer ordering such court, who shall approve or disapprove of the same, within fifteen days thereafter, and shall give notice thereof to the president of such court martial, and to the arresting officer, and if, in his opinion, he shall judge it proper to publish the same in orders; the right of appeal to the commander in chief, is hereby reserved.

Causes for which a commissioned officer may be arrested and tried.

Sentence.

Proceedings and sentence to be delivered to the officer ordering the court.

Right of appeal.

Sec. 36. No officer arrested shall be brought to trial, unless a copy of the charges and specifications, signed by the arresting officer, shall be delivered to him, or left at his usual place of abode within three days after his arrest; nor unless the officer ordering such court martial, shall order the same within thirty days after receiving the arrest, and a copy of the charges and specifications; the sentence of any such court martial shall be according to the nature and degree of the offence, and according to military usage, but shall not extend further than cashiering the officer convicted, and disqualifying him from holding any office in the militia of this state.

Copy of charges and specifications to be furnished officer arrested within three days after arrest.

Court ordered within thirty days.

Sentence to be according to military usage.

Brigade and regimental courts martial for assessing fines and hearing appeals, of what to consist.

Sec. 37. All brigade and regimental courts martial, established by this act, for assessing fines and hearing appeals from inferior courts, shall be organised as follows, to wit: a brigade court martial shall consist of seven commissioned officers, one of whom at least shall be of the rank of colonel, and none below the rank of captain, any five of whom shall constitute a quorum; a regimental court martial shall consist of seven commissioned officers, to be detailed by the commanding officer of the regiment, any five of whom shall constitute a quorum; and the members of every such court shall, before they proceed to business, take the following oath, to wit: "You and each of you do swear, or affirm, that you will well and truly try, and impartially determine, according to evidence, the matter now depending between the state of Mississippi, and the person or persons to be tried by this court: So help you God." Such court shall assess all fines coming within their jurisdiction, and shall hear and decide all appeals from inferior courts martial.

Members to take oath. Form of oath.

Company courts martial of what to consist.

Sec. 38. Each company court martial, shall consist of the commanding officer of said company, who shall be president thereof, and any two of his subaltern officers that he may detail for the purpose; and in case there shall not be three commissioned officers in such company, it shall be the duty of such commanding officer, to require such number of commissioned officers, from the adjacent company or companies, as may be necessary to constitute such court; and they shall take one to the other, an oath, to render impartial justice to all, according to law, and to the best of their knowledge; and no officer shall, on any occasion, sit on a court martial, while his own case is considered.

Rules observed in courts martial of the army of the United States adopted.

Sec. 39. For the better enforcing this act, upon the subject of courts martial, the rules and regulations, observed in the courts martial of the army of the United States, that do not infringe the provisions of this act, shall be in full force for the regulation of the course of proceeding in our militia courts martial.

Privilege from arrest in going to and returning from musters or courts martial.

Sec. 40. No officer, non-commissioned officer, musician or private, shall be arrested by any process, whilst attending any muster or court martial, or whilst going to or returning therefrom; and any arrest, or service of process or execution on the person at such time, except for treason, felony, or breach of the peace, is hereby declared void: and all persons going to, or from muster or court martial, shall pass all ferries and bridges free of expense.

Passage of ferries or bridges free.

Appeals from company and regimental courts martial.

Sec. 41. Any person aggrieved by the sentence of a company court martial, may appeal to the next regimental court martial thereafter; and in like manner, any person aggrieved by the sentence of a regimental court martial, (except in cases of appeal from a company court martial,) may appeal to the next brigade court martial thereafter: *Provided*, Such person give satisfactory security to the president of such court, to pay said fine, in case the sentence be confirmed.

Compensation of members of a brigade court martial and witnesses.

SEC. 42. The members of all brigade courts martial shall receive the sum of three dollars per day, and three dollars for every twenty miles travelling to and from said court; and all witnesses summoned to attend said court, shall receive the same pay that is allowed in courts of common law, which shall be paid out of any money in the military depositum not otherwise appropriated; and it shall be the duty of said president to certify to the correctness of said accounts.

How paid.

Fines without arrest.

SEC. 43. The following fines shall (without arrest) be assessed on all delinquents, to wit: On a colonel, for failing to furnish the commanding officer of his brigade with returns of the strength and condition of his regiment, thirty dollars: for non-attendance at any regimental muster, or any drill of the officers of his regiment, fifty dollars; for failing to give notice of any regimental muster, fifty dollars; for failing to detail a regimental court martial as herein before directed, and giving due notice thereof to members or defaulters, fifty dollars; for failing to call out his regiment on alarm, or to hold any draft ordered, three hundred dollars; for deficiency in any article of arms or uniform, twenty dollars; for neglecting to take bond of the quarter master, fifty dollars; for failing to attend any court martial when detailed as a member, twenty dollars; for failing to notify the commissioned and non-commissioned officers and musicians, of any drill of officers in his regiment, fifty dollars: on a lieutenant colonel or major, for failing to attend at any field muster or drill of officers, or any court martial when detailed as a member, thirty dollars; for failing to give due notice of any field muster or drill of officers of his regiment, thirty dollars; for deficiency in any article of arms, or uniform, fifteen dollars; for failing to turn out his battalion on order, or execute any draft therein, two hundred and fifty dollars; for failing to return any captain of his battalion for default, to the regimental court martial, thirty dollars; for failing to furnish the commanding officer of the regiment with returns of the strength and condition of his battalion, twenty dollars; on a captain or subaltern, for failing to attend at any field or company muster, or drill of officers of his regiment, or any court martial, when detailed as a member, twenty-five dollars; for deficiency in any article of arms or uniform, fifteen dollars: on a captain for failing to give due notice in his company of any field or company muster, or to his subalterns, non-commissioned officers and musicians of any drill of officers in his regiment, twenty-five dollars; for failing to return any of his subalterns for default to the regimental court martial, twenty-five dollars; for failing to appoint company courts martial as prescribed by this act, and to give due notice to the members and defaulters, thirty dollars; for failing to have his company roll called at

On colonel.

On lieutenant colonel or major.

On captain or subaltern.

every field and company muster, ten dollars; for failing to furnish the commanding officer of his battalion, with returns of the strength and condition of his company, twenty dollars; for failing to call out his company on order, or execute any draft therein, one hundred and fifty dollars: on a regimental adjutant or quarter master, for failing to execute any one article of their respective duties, any sum not exceeding fifty dollars: on every non-commissioned officer, to whom any warrant or orders may be given or directed, for refusing or neglecting to execute or obey the same, for neglecting to return such warrant as directed, or making a false return, for neglecting or refusing to summon any delinquent to appear before a court martial, when required, or duly to return the summons, or for not appearing at the parade or place of rendezvous mentioned in such order, a sum not less than five, nor exceeding twenty-five dollars; for neglecting or refusing to act as such, when duly appointed, twenty dollars: on every non-commissioned officer, musician and private, for failing to attend at any regimental drill or muster, three dollars per day; at any battalion muster, two dollars per day; at any company muster, one dollar per day; or, attending not duly equipped, one half the fine for non-attendance: every non-commissioned officer, musician or private, for disobedience, drunkenness, mutiny or other misconduct whilst on duty, arrest for the day, and a fine not exceeding twenty dollars, nor less than five dollars; for refusing to turn out on alarm, twenty-five dollars; for failing to repair to the place of rendezvous, or furnish a sufficient substitute, when drafted or ordered into service, fifty dollars, and all penalties to which a deserter from the service of the United States is subject: *Provided*, That all reasonable excuses shall be received by courts martial at their discretion.

On a regimental adjutant or quarter master.

On non-commissioned officers.

On non-commissioned officers, musicians and privates.

Reasonable excuse received.

Collection of fines.

SEC. 44. All fines which shall be imposed by any court martial on delinquents, shall be reported by the president thereof, to the quarter master of the regiment to which he belongs, within twenty days after they shall have been imposed; and for the purpose of collecting such fines, the president of such court shall, within twenty days as aforesaid, make a list of all such persons fined in any regiment, and who shall not have paid their fines to such president, with the amount of fines so imposed on each, and draw his order under his hand, directed to the adjutant of said regiment, thereby commanding the said adjutant to levy the fine, together with his fees, of the goods and chattels of each person named in said list, and to make return thereof with his proceedings thereon within sixty days; and in case the adjutant shall return as to any of the said delinquents, "no effects found," it shall be lawful for the said president or his successor, in like manner, to issue another warrant against the delinquent, so from time to time returned, until the whole of the said fines shall have been collected; and the said adjutant, in levying the said fines, shall proceed in the same manner, and be entitled to the same fees, and subject to the same penalties, as the sheriff of any county would be entitled to receive, or subject to incur, in cases of execution, against the goods and chattels of any person, issued out of any superior court of record in the state; and said president shall, within twenty days, as aforesaid, deliver the said warrant to the said adjutant, together with all the monies received by him for fines as aforesaid; and the said adjutant shall pay all monies by him to be levied and collected, together with what he may have received as aforesaid, over to the before mentioned quarter master: *Provided*, No non-commissioned officer, musician, or private, shall be subject to the above fines and penalties, on his taking and subscribing an oath, that he cannot pay said fine without impoverishing himself or family; which oath shall be returned with said execution, if any should have been issued.

Fines assessed by a company or regimental court martial, how expended.

SEC. 45. All fines assessed by company courts martial, shall be expended under the direction of the captain or officer commanding, for the use of the company; and all fines assessed by regimental courts martial, shall be expended under the direction of the colonel or officer commanding, for the use of the regiment.

President of court martial how appointed.

To issue subpœnas for witnesses.

May compel witnesses to be sworn and to testify.

Adjutants and orderly sergeants to execute process.

SEC. 46. The president of every court martial, company courts martial excepted, shall be appointed by the officer ordering such court, and shall both before, and after he shall have been sworn as a member of the said court, issue subpœnas for all witnesses, whose attendance at such court, may, in his opinion, be necessary in behalf of the state; and also, on application, for all witnesses in behalf of any officer charged or accused, or person returned as delinquent, and may direct the commanding officer of any company of infantry to cause such subpœna to be served on any witness residing within his beat; and shall have the same power to compel attending witnesses to be sworn and to testify, and to preserve order, as courts of common law jurisdiction; and all adjutants and orderly sergeants, are hereby required to execute any process issued by such president for said purpose.

Penalty on witnesses not appearing.

To be reported to attorney general or district attorney.

SEC. 47. Every witness for not appearing in obedience to such subpœna, when duly served, shall forfeit to the state, the sum of fifty dollars, unless he offers a sufficient excuse therefor; and the president of such court shall, from time to time, report to the attorney general, or district attorney, the names of such delinquent witnesses, together with the names and places of residence of the persons serving such subpœnas, the better to enable him to prosecute for said forfeitures.

Militia considered under arms from the rising to the setting of the sun, on day of parade.

SEC. 48. For the purpose of preserving order on the day of parade, the militia shall be considered as under arms, from the rising to the setting of the sun, on the same day, and shall be exempted from arrest on civil process during that time; and the commanding officer present, of either regiment, battalion or

In what cases bystanders may be put under guard

company, as the case may be, may put under guard any bystander or spectator, who shall abuse, molest or strike any one when on parade or under arms; and every person who shall encroach on the bounds of the parade ground, previously designated, so as not to obstruct the passage of travellers on any highway.

Militia in actual service to be paid, rationed and governed as United States' troops.

Sec. 49. All militia called into actual service, shall be paid, rationed and governed, as the United States' troops are, and shall be subject to the rules and articles of war, as established by the United States; whether such militia be accepted into the service of the United States, or not.

Residence of officers.

Sec. 50. Each major general shall reside within the limits of his division; each brigadier general, within the limits of his brigade; each colonel, lieutenant colonel, and major, within the limits of their respective regiments; and all company officers within the limits of their respective beats.

Compensation of regimental adjutant.

Sec. 51. The regimental adjutant shall receive such compensation, as the regimental court martial shall think just and right, for his service, to be paid by the regimental quarter master, out of funds collected, on order from the president of such court.

Compensation of brigade inspectors.

Sec. 52. The several brigade inspectors shall receive in full compensation for their services, the sum of three dollars per day, for the time they may be actually engaged in travelling on public duty, to be paid out of any funds in the hands of the brigade quarter master, assessed and collected by order of the brigade courts martial, on the warrant of the president of said court.

Volunteer corps of not less than thirty nor exceeding fifty privates completely equipped, may elect their officers, and commissions shall be granted by the governor.

Sec. 53. When any association of persons shall be formed as a volunteer corps of artillery, cavalry, light infantry, grenadiers, or riflemen, of not less than thirty, nor exceeding fifty privates, and shall establish such rules for their uniform, arms and equipments, as the nature of the corps may require; and having completely equipped themselves according to such rules, they shall be authorised to proceed to the election of one captain, one first lieutenant, one second lieutenant, and one cornet or ensign, as the case may require; and commissions shall be granted by the governor, to the persons duly elected.

May appoint managers for their elections.

Sec. 54. All such volunteer associations shall have power and authority to appoint the time, place, and managers for their elections; and no person shall vote at such election who has not fully complied with the rules of the company or troop to which he belongs.

Returns to whom made.

Sec. 55. All returns of such elections shall be made to the commanding officer of the regiment in which the company or troop has been raised; and upon his certificate to the adjutant general, that such company or troop is armed and equipped, according to the provisions of this act, the commissions shall issue, and not otherwise.

Commanding officer to file a roll in the office of the adjutant, ten days before each regimental muster.

Liability for inserting name of person who has not complied with the rules.

Sec. 56. The commanding officer of every volunteer company or troop shall file a roll of his command when so organized, in the office of the adjutant of the regiment at least ten days previous to each and every regimental muster of the regiment to which such company or troop belongs; and should the name of any person be inserted on the roll so furnished, who has not complied with the rules of his corps, the officer enrolling such person may be arrested, and upon proof of the fact before a court martial, he shall be cashiered.

Name of person appearing on parade without equipments to be struck from the roll.

Sec. 57. When any person, belonging to a volunteer corps, shall appear on parade without his complete equipments, his name shall be struck from the roll of his corps; and notice given of the same to the officer commanding the beat in which he resides.

Volunteer corps to be attached to the regiment in which they were formed, except cavalry when formed into a regiment.

Sec. 58. All volunteer corps raised according to the provisions of this act, shall be attached to the regiments in which they were respectively formed; except the cavalry when formed into a regiment, who shall then be subject to their own organization, unless in case of emergency, of sudden invasion or insurrection, when they may be called on by order of the commanders of the local regiments.

Commander in chief may organize cavalry into a regiment.

Sec. 59. When the commander in chief shall be satisfied that there is a sufficient number of well organized troops of cavalry in the state to constitute a regiment, he may organize them as such, preserving the same mode of electing their officers as prescribed for the other militia of the state.

Present commissions not impaired.

Sec. 60. Nothing in this act contained, shall be so construed as to vacate or impair the commission of any officer at present in commission.

Compensation of brigade aids-de-camp.

Sec. 61. The brigade aids-de-camp shall be entitled to receive three dollars per day for every day's actual service, to be certified by the brigadier general, or colonel or commanding officer, as the case may be, on which the auditor of public accounts shall issue his warrant on the treasurer of the state, to be paid out of any monies not otherwise appropriated: *Provided*, That no account for one year shall exceed fifty dollars.

CHAPTER 96.

An act, to divide the militia of Monroe county into two regiments.

Passed January 15, 1823.

Sec. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi, in general assembly convened*, That

Militia of Monroe county divided into two regiments.

the militia of Monroe county shall, from and after the passage of this act, be divided into two regiments, as follows, to wit: All that part of the county lying south of a line beginning at the mouth of Buttahatcha; thence up the same to a point opposite the house of William D. Robertson; thence east to the state line; shall constitute and be known as the nineteenth regiment.

CHAPTER 97.

An act, for the better organization of volunteer corps of militia in this state, and for other purposes.

Passed November 23, 1821.

Governor may commission officers of volunteer corps.

Sec. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi in general assembly convened*, That from and after the passage of this act, the governor shall be, and he is hereby authorised to commission the officers of any volunteer corps of artillery, cavalry, light infantry and riflemen, as shall be raised in conformity to the provisions hereinafter mentioned.

When volunteer corps may elect officers.

Sec. 2. When any association of persons shall be formed as a volunteer corps of artillery, cavalry, light infantry or riflemen, of not less than thirty, nor exceeding forty privates, and shall establish such rules for their uniform, and arms and equipments, as the nature of the corps may require; and having completely equipped themselves according to such rules, they shall be authorised to proceed to the election of one captain, one first lieutenant, one second lieutenant and one cornet or ensign, as the case may require, who shall be commissioned by the governor as aforesaid.

To appoint time, place and managers of elections.

Sec. 3. All such associations, shall have the power to appoint the time, place and managers for their elections; and no person shall vote at such election who has not fully complied with the rules of the company or troop to which he belongs.

Returns to be made to commanding officer of regiment.

Sec. 4. All returns of such elections shall be made to the commanding officer of the regiment in which the company or troop has been raised; and upon his certificate that such company or troop is armed aud equipped, according to the provisions of this act, the commissions shall issue, and not otherwise.

Roll to be filed with regimental adjutant.

Sec. 5. The commanding officer of every volunteer company or troop, shall file a roll of his command when so organized, in the office of the regimental adjutant, at least ten days previous to each and every regimental muster of the regiment to which such company belongs; and should the name of any person be inserted on the roll so furnished, who has not complied with the rules of his corps, the officer enrolling such person may be arrested, and upon proof of the fact before a court martial, he shall be cashiered.

Officer inserting name of person who has not complied with rules to be cashiered.

Sec. 6. When any person belonging to a volunteer corps, who shall appear on parade without his complete equipments, his name shall be struck from the roll of his corps and notice given of the same to the officer commanding the beat in which he resides.

Person appearing on parade without equipments to be struck from roll.

Sec. 7. All volunteer corps so raised, shall be attached to the regiments in which they were formed, except the cavalry when formed into a regiment, who shall then be subject to their own organization; unless in case of emergency of sudden invasion or insurrection, when they may be called on by order of the commanders of the local regiments.

Volunteer corps to be attached to regiment in which formed.

Sec. 8. When any volunteer corps shall be reduced in number below the number of thirty, they shall be disbanded by the commanding officer of the regiment in which they were raised, by a regimental order.

When to be disbanded.

Sec. 9. When the commander in chief shall be satisfied that there is a sufficient number of well organized troops of cavalry in the state to constitute a regiment, he may organize them as such, preserving the same mode of electing their officers as prescribed for the other militia of the State.

Commander in chief may organize regiments of cavalry.

Sec. 10. The tenth regiment shall be attached to the first brigade of the second division; and the fifteenth regiment to the second brigade of the first division.

Tenth and fifteenth regiments.

Sec. 11. All acts and parts of acts, coming within the purview and meaning of this act be, and the same are hereby repealed.

Repealing clause.

CHAPTER 98.

An act, to reduce into one, the several acts concerning patrols.

Passed June 26, 1822.

Sec. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi, in general assembly convened*, That every owner of slaves, and all other persons below the rank of captain, liable to perform militia duty, are hereby declared liable to perform patrol duty, as hereinafter directed, but shall be at liberty to send a substitute to perform said duty.

What persons liable to perform patrol duty.

Sec. 2. It shall be the duty of each and every captain of militia, or commanding officer of a company, to regulate patrols within their own companies, or districts, by making at every company muster of their respective companies, by rotation, a proper list of patrol detachments, and appoint to every such detachment a leader or proper officer; which detachments shall severally consist of three men, besides their leader, and perform the duties of patrols once in every two weeks, or oftener, if or-

Patrol detachments to be regulated by captain of militia.

To consist of three men besides their leader.

To perform duty once in two weeks or oftener, for three months.

dered by the commanding officer of their company, for the space of three months, or until the next company muster, within the district to which they belong: *Provided*, No one shall be compelled to serve out of his regular routine of duty.

Their duties.

Sec. 3. It shall be the duty of each patrol detachment, to visit all negro quarters, or places suspected of containing unlawful assemblies of slaves, or other disorderly persons unlawfully assembled; and upon finding such, to take him, her or them, if free, before the nearest or most convenient justice of the peace of such county, or make report thereof to said justice, so that he, she or they, may be dealt with according to law; and if any slave or slaves shall be found so assembled, or strolling without a pass, or some token from his or her owner or overseer, the said patrol may give any such slave, any number of lashes not exceeding fifteen; and if there be reason to suspect any such slave or slaves, to be runaway from his or her owner, they shall take such slave or slaves before the nearest justice of the peace of such county, to be dealt with according to law, and shall be allowed and paid by the owner, for all runaway negroes so taken up, the sum of six dollars, and shall also be entitled to receive all other fines to which parties may be subject, whom they may bring before any justice as aforesaid.

Compensation for taking up runaway slaves.

Persons impleaded for any thing done by virtue of this act, may plead the general issue and give special matter in evidence.

Sec. 4. If any captain or commanding officer, constable, patrol or other person, shall be sued, arrested or impleaded, for any matter or thing which he shall do, or cause to be done, by virtue of, or in pursuance of this act, it shall and may be lawful for every such captain or other officer or person, to plead the general issue, and give this act and the special matter in evidence on the trial; and if a verdict or judgment shall pass against the plaintiff or plaintiffs, or if he or they shall be nonsuited in his or their action or suit, then, and in that case, the court where such action shall be pending, shall tax, and allow to the defendant, his or their double costs in every such suit or action.

Dogs kept by negroes may be killed.

Penalty on the master for allowing slave to keep stock.

Sec. 5. Patrols and all other persons are hereby authorized to kill all dogs owned or kept by negroes; and all masters or owners, who may allow any slave to keep stock of any description, in his or her own right, shall be subject to a penalty, not exceeding fifty dollars, recoverable before any court of competent jurisdiction, one half to the informer, and the other half to be paid over to the county court, to be appropriated to county purposes.

When a slave shall be considered a runaway.

Sec. 6. All slaves who shall be found at the distance of eight miles, without a pass or some token from the owner or overseer of such slave, or who shall have lain out more than two days from the service of his master or overseer, without leave, shall be considered a runaway, any law to the contrary notwithstanding.

Sec. 7. It shall be the duty of every militia captain, or commanding officer of a company, within this state, to cause to be made, as soon as may be after the passage of this act, a complete list of all male persons within his district, liable by this act to perform patrol duty; including in said list, every person liable as aforesaid, whether belonging to the company under his command, or to any other militia or volunteer company, and in such list the said captain, or commanding officer, shall cause to be included every person liable as aforesaid, who shall come to reside within his district, within ten days after such person shall so come to reside therein.

Captain of militia to make a list of persons liable to perform patrol duty.

Sec. 8. The leader of every patrol detachment, shall give notice to every person appointed, of his detachment, of the time and place of meeting to patrol, and every such person, who, after such notice, or after other information of the said time and place of meeting, shall fail to attend or send a substitute, or shall after attending, neglect a faithful performance of patrol duty, shall pay the sum of five dollars, one half of which, shall when recovered, accrue to the said leader, and the other half to those persons who shall have performed patrol duty in the detachment wherein the default shall have occurred.

Leaders of patrol detachments to give notice of the time and place of meeting for patrol duty. Penalty on failure to attend or to send a substitute.

Sec. 9. It shall be the duty of the leader of every patrol detachment, to return forthwith, the name of every defaulter, to the nearest or most convenient justice of the peace, who shall within ten days thereafter, issue his summons or warrant, requiring such defaulter to appear before him; and in case the said defaulter shall not appear, it shall then be the duty of the said justice, on proof of the service of the process, and on proof of the service of the notice required by the preceding section, or on proof of other information of the time and place of meeting to patrol, to give judgment, and issue execution against the said defaulter for said fine or penalty: *Provided*, That in case a sufficient excuse be given to said justice, within ten days after default made, the said justice shall not issue process against said defaulter; or if such sufficient excuse be given at the hearing, he shall not give judgment against said defaulter, for the fine or penalty aforesaid, but the said defaulter shall nevertheless pay costs.

Mode of proceeding against defaulters.

Sec. 10. The leader of every patrol detachment, shall, for neglecting to give the notice herein before required, or for neglecting to prosecute for the fine aforesaid, as herein before directed, or for neglecting any other duty required by this act, pay the sum of ten dollars, to be recovered before any justice of the peace, one half to the use of the commanding officer of the militia company within whose district the said leader resides, the other half to the use of those persons of the patrol detachment which the said leader was appointed to command; and it is hereby made the duty of the commanding officer, to return to some justice of the peace, the name of every such defaulting

Penalty on leaders of patrol detachments for neglect of duty.

Commanding officers of militia companies to return defaulting leaders.

Penalty for neglect.

leader, and the said justice shall proceed against such defaulting leader, as herein before directed in the case of other defaulters; and if any commanding officer as aforesaid, shall knowingly neglect for three months to make such returns, or shall neglect or omit any other duty required by this act, he shall pay the sum of twenty dollars, to the use of any person suing for the same, to be recovered as herein before directed, in case of other defaulters under this act.

Person interested in a fine, a competent witness.

Sec. 11. Any person interested in any of the fines or penalties incurred by a violation of the provisions of this act, shall be deemed, and received as a competent witness, in any suit for any of said fines or penalties, any law to the contrary notwithstanding.

Commanding officers of companies to appoint patrol detachments when they are not appointed at regular musters.

Sec. 12. If the regular muster of any militia company shall not be held, or from any other cause, patrol detachments, or a sufficient number of them are not appointed, it shall be the duty of the commanding officer of the company to appoint such detachment or detachments, and inform the leader or leaders thereof; and all patrol detachments shall consist of not more than seven, nor less than four persons, including the leader, at the discretion of the commanding officer of the company: *Provided*, That such commanding officer shall not put more than half his company on patrol duty, without orders from the commanding officer of the regiment or battalion to which he belongs.

Proviso.

Leaders responsible for the conduct of their detachments.

Sec. 13. It shall be the duty of commanding officers of companies to appoint leaders of patrols from the most discreet persons within their bounds, which leaders shall be accountable for the orderly conduct of their respective detachments: *Provided*, That if he shall forthwith report any disorderly conduct or disobedience of any person of his detachment to the nearest justice of the peace, he shall be no further accountable. And if any such patrol shall disobey the orders of his leader when on duty, or otherwise behave disorderly, he shall be fined by the judgment of a justice of the peace, in a sum not exceeding ten dollars, to be recovered as herein before prescribed in cases of fines, which, when recovered, shall accrue to the leader and the other patrols of the detachment, in the proportion as provided for other fines, and such disobedient or disorderly patrol shall be moreover liable to pay any damages which may happen to any individual, in consequence of such disorderly conduct, to be recovered before any court having competent jurisdiction.

Proviso.

Penalty on patrols for disobeying their leaders or for disorderly behavior.

CHAPTER 99.

An act, concerning pardons, reprieves, and the remission of fines and forfeitures.

Passed June 10, 1822.

Sec. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi, in general assembly convened,* That it shall and may be lawful for the person administering the government of this state, for the time being, in all cases in which he is authorised by the constitution, to grant pardons and reprieves, and remit fines and forfeitures, to grant and remit the same or any part thereof, upon such conditions, and with such restrictions, and under such limitations, as he may think proper: *Provided,* The same be not inconsistent with the constitution and laws of this state.

Person administering the government may grant pardons and reprieves and remit fines and forfeitures.

Proviso.

CHAPTER 100.

An act, concerning the salaries of certain officers therein named, fixing the compensation of the members of both houses of the general assembly, and their officers, and prescribing the mode in which new security may be required in certain cases.

Passed June 14, 1822.

Sec. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi in general assembly convened,* That the several officers hereinafter mentioned, shall receive for their annual salaries, in quarterly payments, after they shall have been audited according to law, the following sums of money, to wit: The governor, two thousand five hundred dollars; the secretary of state, twelve hundred dollars, the state treasurer, one thousand dollars; the auditor of public accounts, one thousand dollars.

Salary of governor, secretary of state, treasurer and auditor.

Sec. 2. The president of the senate and speaker of the house of representatives, shall each be entitled to receive six dollars per day, and each other member of the house of representatives and of the senate, four dollars for each and every day's attendance at the general assembly; and shall, moreover, be allowed at the commencement and end of every session, at the rate of four dollars for every twenty miles of the estimated distance, by the most usual route, in coming to, and returning from, the place where the general assembly shall sit; and if any member of either house, or the president of the senate, shall be detained by sickness, in coming to, or returning home from any session of the general assembly, or be unable to attend the house to which he belongs, he shall be entitled to the same daily allowance.

Compensation of members of the general assembly.

Sec. 3. The secretary of the senate and clerk of the house of representatives, shall each be allowed six dollars per day; and the enrolling and engrossing clerks, shall each be allowed four

Secretary of the senate, clerk of the house of representatives, enrolling, engrossing and reading clerks.

Clerks how appointed.

Compensation of door-keeper and sergeant at arms.

dollars per day; the reading clerks, when employed, shall each be entitled to four dollars per day. And the secretary of the senate, with the approbation of the president of the senate, and the clerk of the house of representatives, with the approbation of the speaker, shall each appoint so many of said clerks, as may, from time to time, be necessary to the despatch of business in their respective houses. And the doorkeeper of each house shall be entitled to three dollars per day; and the sergeant at arms, if one shall be appointed, shall be entitled to four dollars per day.

Manner of certifying compensation of members and officers of general assembly.

Sec. 4. The compensation which shall be due to the members and officers of the general assembly, shall be certified by the president and speaker, respectively, to the auditor of public accounts, who shall issue his warrant on the state treasurer, which shall be paid out of any monies in the treasury not otherwise appropriated.

Judge or chancellor having been absent from the state, to make oath of the number of days he was absent.

Deduction from his salary for such absence.

If judge or chancellor fail to attend when required to hold court, clerk to certify number of days of absence.

Deduction for such absence.

Deduction to be made in the salaries of all officers for absence from the state.

Sec. 5. If any judge of the supreme court, or the chancellor of the state, shall absent himself from the state, the salary of such judge or chancellor, shall cease during such absence; and he shall, on his return, before he shall be entitled to a warrant on the treasury for his salary, or any part thereof thereafter accruing, make oath before some judge, justice of the county court, or justice of the peace, of this state, to the number of days he shall have been so absent, and file the same in the office of the auditor of public accounts; and it shall be the duty of the auditor to deduct the days so sworn to, from the time for which the salary of such judge or chancellor may be estimated. And in case any of the judges aforesaid, or the chancellor of the state, shall fail to attend at any term of a court, which either of them is required by law to hold, it shall be the duty of the clerk of such court, to certify the number of days such judge or chancellor was absent at each term of his court, to the auditor of public accounts, who shall, in like manner, deduct the days so certified, from the time for which the salary of such judge or chancellor may be estimated, unless the judge or chancellor so absent, shall make oath in manner aforesaid, and file the same in the auditor's office, that his absence was occasioned by sickness, or that his attendance was prevented by the obstruction of high waters; in which cases, the deduction shall not be made, as herein before required; and every officer of this state, entitled by law to an annual salary, who shall, at any time, absent himself from the state, shall be subject to a like deduction from his salary, to be ascertained and made by the auditor of public accounts, as in the case of a judge of the supreme court, or chancellor, who may have been absent as aforesaid, from the state.

In what case officers may be required to give new bond and security.

Sec. 6. In case the securities or either of them, of any state or county officer, required to give bond and security, by any law of this state, shall remove his or their residence out of this state, permanently, or shall become insolvent, it shall be the duty of the governor, in the case of a state officer, or of the presiding justice of the county court, in the case of a county officer, on satisfactory information of such removal or insolvency, to notify such officer to appear before him, at a day and place therein named, within twenty days thereafter, to give a new bond, with other good and sufficient security, in a penalty equal to that of the former bond, with the like condition; and if such officer shall refuse or neglect so to do, if he be a state officer, the governor shall forthwith vacate his commission, and proceed to supply the vacancy; and if the officer so refusing or neglecting be a county officer, the presiding justice of the county court, shall certify the fact to the governor, who shall thereupon vacate the commission of such county officer, and proceed to supply the vacancy occasioned thereby, according to the constitution and laws of this state. And if any state or county officer shall be found by inquest according to law, an idiot, lunatic, or *non compos mentis*, during the period for which he is appointed, the commission of such officer shall be deemed and held to be vacated, and such vacancy shall be supplied as in case of the death, resignation, or removal of such officer.

Commission vacated on neglect or refusal.

Commission of person found to be an idiot, lunatic, &c. deemed vacated.

CHAPTER 101.

An act, to re-establish the salary of the adjutant general.

Passed January 20, 1823.

SEC. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi, in general assembly convened*, That the adjutant general of this state shall receive as a compensation for his services, an annual salary of two hundred and fifty dollars, to be paid quarter-yearly out of the treasury of the state, and that the auditor of public accounts be and he is hereby authorized and required to issue his warrant upon the treasury in favor of the adjutant general, for services heretofore rendered, for which he has received no compensation, at the rate of the above salary.

Adjutant general's salary established.

Auditor, to issue warrant for services heretofore rendered.

CHAPTER 102.

An act, to regulate the solemnization of marriages; prohibiting such as are incestuous, or otherwise unlawful.

Passed June 29, 1822.

SEC. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi in general assembly convened*, That any minister of the gospel, ordained according to the rules of his church or society; any judge of the supreme court or court of chancery, judge of probate; any justice of the county court, or justice of the peace, within their respective counties or jurisdictions, may solemnize the rites of matrimony between any free

Who may solemnize rites of matrimony.

Ministers must produce credentials to orphans' court.

May be authorized to solemnize rites of matrimony at discretion of court.

white persons within this state, who shall produce a license as herein directed: *Provided*, That such minister shall have produced to the orphans' court of some county in this state credentials of his ordination, and of his being in regular communion with the christian society of which he is a member, and have obtained from such court, a testimonial, authorizing him to solemnize the rites of matrimony, in this state, which said testimonial shall be granted at the discretion of the said court, and recorded by the register, in a book to be kept for that purpose, and also for the purpose of recording therein all marriage licenses, consent of parents and guardians, and certificates of the solemnization of marriages.

Persons may be joined in marriage according to rules of their society.

Register of such marriages to be made in a book and certificate returned to register of orphans' court.

SEC. 2. It shall and may be lawful for any pastor of a religious society in this state, to join together in marriage, such persons as are of the society, according to the rules and customs established by such society: *Provided*, That the clerk or keeper of the minutes, proceedings, or other books of the religious society, wherein such marriage shall be had and solemnized, shall make a true and faithful register of all marriages solemnized in the society, in a book by him kept for that purpose, and return a certificate of the same to the register of the orphans' court, to be by him recorded.

Books of marriages admitted as evidence.

SEC. 3. Such books of marriages, so kept by the respective registers of the orphans' court, and by the clerks of such religious societies as are authorized to solemnize marriages, by the preceding section, shall be admitted as evidence in all the courts of law and equity in this state.

How Quakers Menonists, &c. may solemnize their marriages.

SEC. 4. It shall be lawful for the people called Quakers and Menonists, or any other christian society that has adopted similar regulations in their church, to solemnize their own marriages, and be joined together as man and wife, by the mutual consent of the parties, openly published and declared before their congregation, when convened for religious worship, in manner, and agreeably to the regulations heretofore practised in their respective societies.

Marriage licenses how granted.

Bond and security.

Condition.

Consent of parent or guardian when requisite.

SEC. 5. Marriage licenses shall be granted and issued by the register of the orphans' court of the county in which the female usually resides, under the following regulations and restrictions: The register shall take a bond with sufficient security, in the penal sum of two hundred dollars, payable to the governor of the state, for the time being, and his successors in office, for the use of the state, conditioned, that there is no lawful cause to obstruct the marriage for which such license is granted; and if the male intending to marry be under the age of twenty-one years, or the female under the age of eighteen years, the consent of the parent or guardian of such infant, shall be personally given before the said register, or due proof made to him, by the oath of at least one credible witness, (which oath, the said register is hereby authorized to administer,) that such parent or guardian did sign a certificate, then produced, giving his or her consent for the celebration of such marriage; whereupon, the said register shall record the consent, personally given as aforesaid, or the certificate thereof so proved, and issue a license, and record the same, directed to any minister, judge, or justice, lawfully authorized to celebrate the rites of matrimony. And if any register shall issue any marriage license, without the requisites before prescribed, or in any other manner than above mentioned, such register shall, for each offence, forfeit and pay the sum of five hundred dollars; recoverable by action of debt, in any court having cognizance thereof, one half to the state, for the use and benefit of the literary fund, and the other half to the use of the person suing for the same.

Consent to be recorded.

Also license.

Penalty for issuing license illegally.

Sec. 6. If any minister, judge or justice shall join any persons together as man and wife, without lawful license as by this act required, or go out of the state, and marry persons belonging to the state, without such license, such minister, judge or justice shall, in either case, forfeit and pay the sum of two thousand dollars, to be recovered by action of debt, in any court having cognizance thereof, one half to the state, for the use and benefit of the literary fund, and the other half to the use of the person suing for the same.

Penalty for marrying persons without license.

Sec. 7. A certificate of every marriage hereafter solemnized, signed by the minister, judge or justice celebrating the same, or (in case of Quakers, Menonists, or other societies that solemnize their marriage by consent of parties, taken in open congregation as aforesaid,) by the clerk of the meeting or society, shall be transmitted by such minister, judge, justice or clerk, as the case may be, to the register of the orphans' court of the county wherein the marriage is solemnized, to be recorded, within six months thereafter, by the register; an exemplification of which shall be evidence of such marriage. And the said register shall receive for his services for taking bond, consent of parents or guardians, and recording the same, granting and recording license and marriage certificate, the sum of two dollars, to be paid at the time of issuing such license. And every minister, judge, justice or clerk of a congregation, as the case may be, failing to transmit such certificate to the register within the time above prescribed, shall forfeit and pay the sum of fifty dollars, to be recovered in any court having cognizance thereof, to any person who will sue for the same.

Certificate of marriage to be transmitted to register of orphans' court.

To be recorded.

Exemplification to be evidence of marriage.

Fees for granting license, recording, &c.

Penalty on failure to transmit certificate to register.

Sec. 8. If any person shall marry within the following degrees, that is to say: If the son shall marry his mother, or stepmother, the brother his sister, the father his daughter, or his daughter's daughter; or if the son shall marry the daughter begotten by his father and born of his step-mother, or his aunt, being his father's or mother's sister, or marry his uncle's widow; or if the father shall marry his son's widow; or if a man

Degrees of relationship within which marriage is prohibited.

Penalty.

Marriage to be declared void.

shall marry his wife's daughter, or his wife's son's daughter, or his wife's daughter's daughter; every person or persons, so unlawfully married, may be prosecuted by indictment, and on conviction, shall be fined, not exceeding five hundred dollars, for the use and benefit of the literary fund. And the court, on conviction as aforesaid, shall moreover, declare such marriage null and void, to all intents and purposes; and may, at their discretion, cause the parties to enter into a recognizance, with security, that they will not cohabit thereafter.

Penalty on person who shall unlawfully take a woman contrary to her will and marry or defile her or cause her to be married or defiled.

Marriage void.

Such person not to enjoy any part of her estate.

SEC. 9. If any person shall unlawfully take any maid, widow or wife, contrary to her will, and shall marry her himself, or cause, or procure her to be married to another, either with or without her consent, or shall defile, or cause her to be defiled, such person, so offending, his aiders, abettors, counsellors and procurers, and such as wittingly receive such woman, so taken against her will, and knowing the same, shall be deemed guilty of a high misdemeanor, and on conviction thereof, before any court having competent jurisdiction, shall be fined and imprisoned at the discretion of the court, in a sum not less than one thousand, nor exceeding five thousand dollars, and for a term not less than one nor exceeding two years; and every such marriage shall be void; and also, the person to whom such woman shall be married, shall not receive, take, hold, possess or enjoy any part of her estate, real or personal, by any gift, grant, bequest, or devise, of, from, or under her, but every such gift, grant, bequest or devise, so made to him, or for his use, shall be void, and of no effect.

Penalty for unlawfully taking away from parent or guardian, an unmarried female within the age of fourteen years with intent to seduce deflower or contract matrimony with her.

Penalty if he deflower or contract matrimony with such female.

SEC. 10. If any person shall unlawfully convey or take away a female, unmarried, whether legitimate or illegitimate, being within the age of fourteen years, out of, or from the possession, custody or governance, and against the will of the father, mother, or guardian of such female, though with her own consent, with an intent to seduce, deflower, or contract matrimony with her, such offender shall be deemed guilty of a high misdemeanor, and on conviction thereof, before any court of competent jurisdiction, shall be punished by fine and imprisonment, in a sum not less than five hundred, nor exceeding one thousand dollars, and for a term not less than six months, nor exceeding one year, at the discretion of the court; and if he deflower such female, or without the consent of the father, mother, or guardian, contract matrimony with her, then and in such case, he shall be deemed guilty of a high misdemeanor, and on conviction thereof, before any court having competent jurisdiction, shall be punished by fine and imprisonment, in a sum not less than one thousand, nor exceeding two thousand dollars, and for a term, not less than one, nor more than two years, at the discretion of the court. No person intermarrying with such infant female, shall be entitled either in law or equity, to any part of the estate, real or personal, to which such female may have right or title, either in possession, remainder or reversion.

Sec. 11. Whereas, it is represented that justices of the quorum have in some instances, solemnized the rites of matrimony, under a belief that they were authorized to do so by law: *Be it therefore enacted*, That all marriages heretofore solemnized by justices of the quorum, in their respective counties, shall have the same validity and effect, as if such marriages had been solemnized by justices of the peace, or any other person lawfully exercising the authority to marry; and the issue of all such marriages shall, to all intents and purposes, be deemed legitimate.

Marriages heretofore solemnized by justices of the quorum valid.

CHAPTER 103.

An act, granting relief in certain cases, against collusive judgments and wrongful alienations of land.

Passed June 10, 1822.

Sec. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi, in general assembly convened*, That if tenant in dower, tenant by the curtesy, or other tenant for term of life or lives, is, or shall be impleaded, the person to whom the reversion or remainder belongs, may come into court at any time before judgment, and be admitted to defend his or her right.

When the reversioner may defend suit brought against tenant for life or years.

Sec. 2. If tenant in dower, tenant by the curtesy, or other tenant for term of life or lives, shall when impleaded, make default, or give up the tenements demanded, or if judgment be given on such default or surrender, then the person to whom the reversion or remainder belongs after the death of such tenant, shall in no wise be prejudiced or injured by such default, surrender, or judgment.

Reversioner not prejudiced by the default or surrender of the tenant for life or years or judgment thereon.

Sec. 3. The dying seized of any disseizor of, or in any lands, tenements, or hereditaments, having no right or title therein, shall not be such descent in law to the heir of the disseizor, as to take away the entry of the person who, at the time of such descent, had lawful title of entry; except such disseizor hath had peaceable possession for the space of five years next after the disseizin committed, without entry by, or continual claim of, such as have lawful title.

When the dying seized of a disseizor shall not take away the right of entry.

Sec. 4. Whereas, when a husband doth lose the lands of his wife by default, it is unreasonable that the wife, after the death of the husband should have no recovery but by writ of right: *Be it therefore enacted*, That a woman, after the death of her husband, shall not be injured by such default; but shall notwithstanding retain her right of entry, and prosecute the same by writ of entry, or any other action, real or mixed, that may be adapted to the case; and, if in such action the tenant object to her claim or demand, that he entered into the land by judgment, and it be found that such entry was by judgment upon default of her husband; then, if required, he shall answer thereto and in

Widow not barred of right of entry into her land lost by her husband's default.

such answer shew his right to the said land, in the same manner as in the writ which he first took out against the husband and wife, and if he verify such right, then she shall gain nothing by her writ, otherwise she shall recover.

When the wife may defend a suit for her lands.

Sec. 5. If in any suit against the husband and wife, for lands of the wife, the husband absent himself, or will not defend his wife's right, or against the wife's consent will render the said lands, then the wife may come at any time before judgment, and defend her right, without her husband.

Husband's conveyance of his wife's lands not to prejudice her or her heirs.

Sec. 6. No feoffment, fine, or other act or acts, which shall be made, suffered or done, by the husband only, of any lands, tenements or hereditaments, being the inheritance or freehold of his wife, during the coverture between them, shall work any discontinuance thereof, or prejudice or affect the said wife, or her heirs, or such as shall, by her death have right, title or interest to the same; but the said wife, or her heirs, or such other person to whom such right shall appertain after her disease, may, after the death of the said husband, lawfully enter into such lands, tenements and hereditaments, and hold and enjoy the same, according to his, her, or their rights and titles therein; any such feoffment, fine, or other act or acts, to the contrary notwithstanding.

Alienations by a woman, when sole, of her dower or estate for life in lands of her husband, and recoveries of the same by covin, to be void.

Sec. 7. If any woman who hath, or shall have, an estate in dower, or for term of life jointly with her husband, or only to herself, or to her use, in lands, tenements or hereditaments, of the inheritance or purchase of her husband, or given to the husband and wife for term of life, by any ancestor of the husband, or by any other person, seized to the use of the husband, or of his ancestors, shall, when sole, discontinue or alien the same, with or without warranty, or shall suffer any recovery thereof, by covin, against her, them, or any of them, or any other seized to their use, or to the use of any of them as aforesaid, then all such discontinuances, alienations and recoveries, shall be utterly void and of no effect; and it shall be lawful for the person to whom, after the decease of such woman, the interest, title or inheritance of the said lands, tenements or hereditaments, do, or shall belong, immediately after such discontinuance, alienation or recovery, to enter upon, possess and enjoy the said lands, tenements or hereditaments, according to such title and interest, as the said person should have had in the same, if such woman had been dead, and no discontinuance, alienation or recovery, had been made or suffered.

If a woman with any subsequent husband make such alienation or recovery, then the person to whom the inheritance belongs may immediately enter.

Sec. 8. If any woman who hath, or shall have an estate in dower, or for term of life, jointly with her husband, or only to herself, or to her use, in lands, tenements or hereditaments, of the inheritance or purchase of her husband, or given to the husband and wife for life, by any ancestor of the husband, or by any other person, seized to the use of the husband, or of his ancestors, shall with any after taken husband, make or suffer any such discontinuance, alienation or recovery, as is mentioned in the preceding section, then it shall be lawful for the person, to whom, after the decease of the said woman, the said lands, tenements or hereditaments, do, or shall belong, to enter immediately after such discontinuance, alienation or recovery, into the said lands, tenements or hereditaments, and them to possess and enjoy during the life of such husband, according to such title and interest, as the said person should have had in the same, if such woman had been dead, and no discontinuance, alienation or recovery, had been made or suffered; but, in such case the said woman may, if she survive such after taken husband, enter into, possess and enjoy the said lands, tenements or hereditaments, according to her first estate in the same.

But the woman if she survive, may re-enter.

Sec. 9. This act shall not extend to any recovery or discontinuance which shall be suffered or made with the heirs next inheritable to the said woman, or where the person or persons who next after her death should have an estate of inheritance in the said lands, tenements or hereditaments, shall assent or agree to the said recovery, if such assent or agreement be of record: *Provided*, That it shall be lawful for every such woman, being sole, or married after the death of her first husband, to give, sell, or make discontinuance of such lands, tenements or hereditaments, for term of her life only, after the course of the common law.

This act not to extend to any recovery with the assent of the heir or reversioner.

Conveyances made by such woman, for the term of her life good.

Sec. 10. If a man shall alien any lands or tenements which he may hold by the curtesy, neither his children, nor the issue of his children, shall be barred by his deed, from recovering the same of the seizin of their mother, although in such deed of their father, there be a clause that he and his heirs are bound to warranty; and in like manner, the heirs of the wife shall not after the death of their father and mother, be barred, by the deed of their father, from recovering the inheritance of their mother, which he aliened in her life time.

Alienation by tenant by curtesy not to bar the issue of the inheritance of their mother.

Sec. 11. The suit of the woman, or her heirs, after the death of her husband, for lands or tenements aliened by the husband, shall not be delayed by the non-age of the heir or heirs who ought to warrant.

In such case non-age not to delay suits brought by the woman or her heirs.

Sec. 12. If tenant for term of life, or in dower, or by the curtesy, be impleaded, and judgment given against him or her for the lands or tenements, then the person or persons to whom the reversion or remainder of the same belongs at the time of such judgment, his, her or their heirs or successors, may have writ of error, if error be found in the record of such judgment, as well in the life time of said tenant, as after his or her death; and if such judgment be reversed, the tenant, if living, shall be restored to his or her possession of the said lands, or tenements, and the party prosecuting such writ of error, to the arrearages of

The reversioner or remainder-man may have writ of error on judgment against tenant for life, in dower or by curtesy.

rent for the same; and if such tenant be dead at the time of the judgment given on such writ of error, then restitution of the said lands or tenements, shall be made to the party prosecuting the said writ, together with the arrearages of rent: *Provided, always*, That if the party prosecuting the said writ of error, allege that the judgment first obtained against such tenant, was by covin or assent, then restitution shall be made to the party prosecuting said writ, with arrearages, although the said tenant be living; but in such case the said tenant may have a *scire facias* against the party plaintiff in error, if he will deny and traverse the covin or assent aforesaid, and not otherwise.

If the first judgment was by covin, restitution shall be made to the plaintiff in error.

CHAPTER 104.

An act, concerning conveyances.

Passed June 13, 1822.

What estate in lands shall not be conveyed, but by deed.

How such conveyance shall be proved, and where recorded.

SEC. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi, in general assembly convened*, That no estate of inheritance or freehold, or for a term of more than one year, in lands or tenements, shall be conveyed from one to another, unless the conveyance be declared by writing sealed and delivered; nor shall such conveyance be good against a purchaser for valuable consideration, not having notice thereof, or any creditor, unless the same writing be acknowledged by the party or parties who shall have executed it, or be proved by one or more of the subscribing witnesses to it, that such party or parties signed, sealed and delivered the same, as his, her, or their voluntary act and deed, before a judge of the supreme court of this state, or a justice of the county court, justice of the peace and notaries public of that county in which the lands, tenements and hereditaments, or some part thereof are situated; and a certificate of such acknowledgment or proof shall be written upon or under the said deed or conveyance, and be signed by the judge or justice before whom it was made, and be lodged with the clerk of the county court of the proper county, to be there recorded: and every deed or conveyance so acknowledged, or proved and certified and recorded as aforesaid, shall be received in evidence in any court of this state, in like manner as if the same were then and there produced and proved.

How covenants and agreements in consideration of marriage shall be proved; and where recorded.

SEC. 2. No covenant or agreement made in consideration of marriage, shall be good against a purchaser for valuable consideration, not having notice thereof, or any creditor, unless the covenant or agreement be acknowledged by the party bound thereby, or proved by one or more witnesses to be his, her, or their act, and lodged with the clerk of the county court of the proper county, to be there recorded, in the same manner that other deeds or conveyances of real or personal estate are directed by law to be acknowledged, proved and recorded.

Bargains, sales, and other conveyances of lands, deeds of settlement upon marriage, deeds of trust and mortgages, how far void, if not recorded.

SEC. 3. All bargains, sales, and other conveyances whatsoever, of any lands, tenements or hereditaments, whether they be made for passing any estate of freehold or inheritance, or for a term of years, and all deeds of settlement upon marriage, wherein either lands, slaves, money, or other personal thing shall be settled or covenanted to be left or paid at the death of the party or otherwise; and all deeds of trust and mortgages whatsoever, which shall hereafter be made and executed, shall be void as to all creditors and subsequent purchasers, for valuable consideration without notice, unless they shall be acknowledged or proved, and lodged with the clerk of the county court of the proper county, to be recorded according to the directions of this act; but the same as between the parties and their heirs, and as to all subsequent purchasers, with notice thereof, or without valuable consideration, shall nevertheless be valid and binding.

How far valid.

Where deeds of personal property shall be recorded.

SEC. 4. Every deed respecting the title of personal property hereafter executed, which by law ought to be recorded, shall be recorded in the court of that county in which such property shall remain: and if afterwards, the person claiming title under such deed, shall permit any other person in whose possession such property may be, to remove with the same or any part thereof out of the county in which such deed shall be recorded, and shall not within twelve months after such removal, cause the deed aforesaid to be certified to the county court of that county, into which such other person shall have so removed, and to be delivered to the clerk of such county court to be there recorded, such deed, for so long as it shall not be recorded in such last mentioned county, and for so much of the property aforesaid as shall have been so removed, shall be void in law as to all purchasers thereof for valuable consideration, without notice, and as to all creditors.

Provision, when the person claiming under such deed, shall permit the property to be removed out of the county, &c.

All deeds (except deeds of trust and mortgage) valid as to all persons; from their date, if recorded within three months.

SEC. 5. Every conveyance, covenant, agreement, and other deed in this act mentioned, except deeds of trust and mortgages, which shall be acknowledged, proved, and certified according to law, and delivered to the clerk of the proper county, to be recorded within three months after the sealing and delivery thereof, shall take effect and be valid as to all persons, from the time of such sealing and delivery; but all deeds of trust or mortgages whensoever they shall be delivered to the clerk to be recorded, and all other conveyances, covenants, agreements and deeds which shall not be acknowledged, proved or certified, and delivered to the clerk of the proper court, to be recorded, within three months after the sealing and delivery thereof, shall take effect, and be valid as to all subsequent purchasers for valuable consideration without notice, and as to all creditors; from the time when such deed of trust or mortgage, or such other conveyance, covenant, agreement or deed shall have been so acknowledged, proved or certified, and delivered to the clerk of the proper court to be recorded, and from that time only: *Pro-*

Deeds of trust and mortgages whenever recorded; and other deeds not recorded within three months, valid from the time of being recorded, only.

If two deeds for the same property are delivered to clerk on same day, that first executed to be preferred.

vided, however, That if two or more deeds embracing the same property, after having been so acknowledged, proved or certified, be delivered to the clerk to be recorded on the same day, that which was first sealed and delivered shall have preference in law.

Title bonds or other written contracts concerning lands, may be recorded.

Effect thereof.

Sec. 6. Every title bond, or other written contract, in relation to land, may be proved, certified or acknowledged, and recorded in the same manner as deeds for the conveyance of land; and such proof, acknowledgment or certificate, and the delivery of such bond or contract to the clerk of the proper court to be recorded, shall be taken and held as notice to all subsequent purchasers, of the existence of such bond or contract.

No written instrument concerning the conveyance or sale of property, to be recorded unless acknowledged or proved and certified as directed by this act.

Sec. 7, No deed, mortgage, bond or other written instrument of, or concerning the sale or conveyance of lands or tenements, whether the same be made for passing an estate of freehold or inheritance, or for a term of years, or for any other purpose whatsoever, nor any deed or other writing for the sale of personal estate, which has been made and executed, and not already acknowledged, or proved and certified according to law, or which shall hereafter be made and executed, shall be admitted to record in any clerk's office in this state, unless the execution of the same shall have first been acknowledged, or proved and certified, in the manner directed by this act.

Clerks of the county court to record deeds, &c. in well-bound books, of good paper.

Sec. 8. The clerk of every county court within this state, shall record in well bound books, of good paper, to be provided by him for that purpose, and carefully preserve all deeds, bonds, mortgages or other instruments of writing, of, or concerning real or personal estate within his county, which may be acknowledged or proved, and certified according to law, and shall be delivered to him to be recorded; to which books every person shall have access at proper seasons, and be entitled to transcripts from the same, on paying the fees allowed by law.

Manner in which the record is to be made.

Sec. 9. It shall be the duty of such clerk to record without delay, every such deed, conveyance, or other instrument of writing as aforesaid, with the acknowledgments or proofs and certificates, written on or under the same; and the plots of surveys, schedules and other papers therein referred to and annexed, by entering them word for word in a fair hand, and mentioning in the margin, or at the foot of such record, the day of the month and the year, when the said deed, conveyance, or other instrument of writing was delivered to him, or brought to his office to be recorded.

Further duties of the clerk.

Sec. 10. The clerk or his deputy, to whom any deed, conveyance, or other instrument of writing may be delivered to be recorded in his office, shall give a receipt for the same, expressing therein the names of the parties, the date thereof, and the quantity of land or other property therein specified, and the clerk's shall certify on or under such deed, conveyance, or other instrument of writing, the day of the month and year when he received it; and when the same is recorded, shall mark thereon the number of the book, and the page or pages in which it is recorded; and shall deliver it to the party entitled to receive it.

Penalty on clerk for neglect of any duty required by this act.

Sec. 11. If any clerk shall refuse or neglect to perform any of the duties required by this act, he shall, for every such refusal or neglect, forfeit and pay two hundred dollars, to be recovered with costs by action of debt, in any court of competent jurisdiction, to be brought in the name of the county treasurer, to and for the use of the county; and he shall also be liable for all damages which the party aggrieved may have sustained by reason of the non-performance of any such duty.

Certificate of acknowledgment.

Sec. 12. The acknowledgment or proof of any deed, conveyance, or other instrument of writing, shall, before the same is admitted to record, be certified by the judge or justice taking such acknowledgment or proof, in the form, or to the effect following, to wit:

" *State of Mississippi, ——— County, ss.*

"Personally appeared before me —————, Esquire, a judge of the supreme court, a justice of the county court, justice of the peace and notaries public of said county, (as the case may be,) the within or above named A B, who acknowledged that he signed, sealed, and delivered the foregoing deed, (or other instrument,) on the day and year therein mentioned, as his act and deed.

" Given under my hand and seal, this ——— day of ——— A. D. ———."

Certificate of proof by a subscribing witness.

And in case of proof by a subscribing witness thus (as above, to the end of the description of the judge or justice,) " the ——— ——— named E F, one of the subscribing witnesses to the annexed deed, (or other writing,) who being first duly sworn, deposeth and saith, that he saw the above named A B, whose name is subscribed thereto, sign, seal and deliver the same to the ——— named C D; that he, this deponent subscribed his name as a witness thereto, in the presence of the said A B, and that he saw the other subscribing witness (or witnesses naming them, as the case may be,) sign the same in the presence of the said A B, and in the presence of each other, on the day and year therein named.

" Given under my hand and seal, &c."

How conveyances may be acknowledged or proved, if the grantors or witnesses reside in some other state in the Union.

Sec. 13. If the party who shall execute any deed or conveyance of lands, tenements or hereditaments, lying and being in this state, or the witnesses thereto reside not in this state, but in some other state or territory in the Union, then the said acknowledgment or proof, made before, and certified by the chief justice of the United States, or an associate justice of the supreme court of the United States, or a district judge of the same, or any judge or justice of the supreme or superior court of any state or territory in the union, shall be as good and effectual, as if it had been made before, and certified by one of the judges of the supreme court of this state.

How conveyances may be acknowledged or proved if the grantors or witnesses reside in a foreign kingdom or state.

SEC. 14. If the party who shall execute any deed or conveyance of lands, tenements or hereditaments, lying and being in this state, or the witnesses thereto reside in a foreign kingdom, state, nation or colony, then the said acknowledgment or proof, made before any court of law, or mayor, or other chief magistrate of any city, borough, or corporation of the said foreign kingdom, state, nation or colony in which the said party or witnesses reside, certified by the said court, mayor or chief magistrate, in the manner such acts are usually authenticated by them or him, shall be as good and effectual as if it had been made before, and certified by one of the judges of the supreme court of this state.

The two preceding sections to extend to *femes covert.*

SEC. 15. The two preceding sections of this act shall be construed to extend to, and comprehend acknowledgments of deeds or conveyances, with relinquishment of dower, which shall be made by *femes covert* who reside out of this state, and in any other state or territory in the union, or in any foreign kingdom, state, nation, or colony.

Grantors or witnesses being dead or absent proof may be made of their hand-writing.

SEC. 16. If the grantor or grantors, witness or witnesses of any deed, conveyances or other instrument of writing be dead or absent, so that his or their personal attendance cannot be had, it shall be lawful for any judge of the supreme court, justice of the county court, justice of the peace, and notaries public of the proper county, as the case may be, to take under oath or affirmation, the examination of any person or persons, to prove the hand writing of such deceased or absent witness or witnesses; or where such proof cannot be had, then to prove the hand writing of such grantor or grantors, which shall be certified on or under such deed, conveyance, or other instrument of writing, and signed by the judge or justice, or notaries public, before whom such proof shall have been made; and such deed, conveyance or other instrument of writing, so proved and certified, shall be received in evidence, and be recorded by the clerk of the county court of the proper county, in the same manner as other deeds, conveyances, or other instruments of writing are directed by this act to be recorded.

Acknowledgment and proof of a deed, &c. before a justice of any county court in the state, shall be good.

SEC. 17. The acknowledgment or proof of any deed, conveyance, or other instrument of writing made, or to be made before a justice of any county court in this state, whether the lands, tenements or hereditaments therein expressed, or any part thereof, be situate in the said county or elsewhere in this state, shall have the same construction and effect, and be as good and available in law as if such acknowledgment or proof had been made before a judge of the supreme court of this state, or a justice of the county court, or justice of the peace of the county, in which the said lands, tenements or hereditaments are situated: *Provided*, That the certificate of such acknowledgment or proof shall be accompanied by a certificate of the clerk of the court to which such justice may belong, that such justice is of such court, and that due faith and credit are due to any act done by him in his official capacity; and the seal of office shall be affixed to such certificate by said clerk.

Proviso.

SEC. 18. The preceding section of this act shall be construed to extend to, and comprehend acknowledgments of deeds or conveyances, with relinquishment of dower, which shall be made by *femes covert*, who reside out of the limits of the county, in which the lands, tenements and hereditaments conveyed, or any part thereof, are situated.

The preceding section to extend to *femes covert*.

SEC. 19. No estate of a *feme covert* in any lands, tenements, or hereditaments, lying and being in this state, shall hereafter pass by her deed or conveyance, without a previous acknowledgment made by her, on a private examination, apart from her husband, before a judge of the supreme court, a justice of the county court, or justice of the peace, authorized by this act to take such acknowledgment, that she signed, sealed and delivered the same as her voluntary act and deed, freely, without any fear, threats or compulsion of her husband, and a certificate thereof written on or under the said deed or conveyance, and signed by the judge or justice before whom it was made; and every deed or conveyance so executed and acknowledged by a *feme covert*, and certified as aforesaid, shall release and bar her right of dower, in the lands, tenements and hereditaments mentioned in such deed or conveyance.

No estate of *feme covert* in lands to pass by her deed without acknowledgment by her on private examination and certificate thereof.

SEC. 20. It shall be lawful, where any deed or conveyance shall have been recorded, and the *feme covert* hath not relinquished her right of dower, in the lands, tenements and hereditaments therein mentioned, for such *feme covert* to relinquish her right of dower in the manner directed by this act; and the certificate thereof shall be recorded in the court where such deed or conveyance may have been recorded, and shall be as good and effectual in law to release and bar her right of dower in the lands, tenements and hereditaments in such deed or conveyance mentioned, as if the same had been taken at the time such deed or conveyance was admitted to record.

A *feme covert* may relinquish her dower after the conveyance is recorded.

SEC. 21. If an original deed, conveyance, or other instrument of writing, which shall have been recorded according to the provisions of this act, be lost or mislaid, or destroyed by time or accident, and not in the power of the party to produce; the record of such deed, conveyance, or other instrument of writing, or the transcript of such record, certified by the clerk in whose office the record is kept, shall be received in evidence in any court of law or equity in this state, and be as good, effectual,

If original deed be lost, record or copy of record received in evidence.

and available in law, as if the original deed, conveyance, or other instrument of writing were then and there produced and proved.

When record shall not be removed before a court out of the county.

SEC. 22. No record shall be removed by writ of *subpœna duces tecum*, or otherwise, before any court out of the county in which such record is kept, when a certified transcript thereof may be given in evidence.

Every estate conveyed or devised, to be deemed a fee simple, if a less estate be not limited.

SEC. 23. Every estate in lands, which shall hereafter be granted, conveyed or devised to any person or persons, although other words heretofore necessary to transfer an estate of inheritance be not added, shall be deemed a fee simple, if a less estate be not limited by express words, or do not appear to have been granted, conveyed or devised, by construction or operation of law.

Every estate in lands or slaves created in fee tail, shall be an estate in fee simple.

SEC. 24. Every estate in lands or slaves, which now is, or shall hereafter be created an estate in fee-tail, shall be an estate in fee simple; and the same shall be discharged of the conditions annexed thereto by the common law, restraining alienations before the donee shall have issue, so that the donee, or person in whom the conditional fee is vested, or shall vest, shall have the same power over the said estates, as if they were pure and absolute fees: *Provided*, That any person may make a conveyance, or demise of lands to a succession of donees then living, and the heir or heirs of the body of the remainder-man, and in default thereof, to the right heirs of the donor in fee simple.

Alienations and warranties of land shall pass only what the grantor might lawfully convey.

SEC. 25. All alienations and warranties of lands, tenements or hereditaments, made by any person or persons, purporting to pass or assure a greater right or estate, than such person may lawfully pass or assure, shall operate as alienations or warranties of so much of the right and estate in such lands, tenements and hereditaments, as such person or persons might lawfully convey, but shall not pass, or bar the residue of the said right or estate, purporting to be conveyed or assured; nor shall the alienation of any particular estate, on which any remainder may depend, whether such alienation be by deed or will, nor shall the union of such particular estate, with the inheritance, by purchase or by descent, so operate, by merger or otherwise, as to defeat, impair, or in any wise affect such remainder.

Alienations of particular estates, or their union with the inheritance, shall not defeat the remainders.

Rule for the construction of contingent limitations.

SEC. 26. Every contingent limitation in any deed or will, made to depend upon the dying of any person without heirs, or heirs of the body, or without issue, or issue of the body, or without children, or offspring or descendant, or other relative, shall be held and interpreted a limitation to take effect when such person shall die, not having such heir or issue, or child or offspring, or descendant, or other relative, (as the case may be,) living at the time of his death, or born to him within ten months thereafter, unless the intention of such limitation be otherwise expressly and plainly declared on the face of the deed or will creating it.

When a contingent remainder shall be good, though no estate be conveyed to support it.

Sec. 27. Where an estate hath been, or shall be, by any conveyance, limited in remainder to the son or daughter of any person to be begotten, such son or daughter, born after the decease of his or her father, shall take the estate in the same manner as if he or she had been born in the life-time of the father, although no estate shall have been conveyed to support the contingent remainder after his death; and hereafter, an estate of freehold or of inheritance may be made to commence *in futuro*, by deed, in like manner as by will.

Estates of freehold, &c. may be made to commence *in futuro* by deed.

In conveyances of uses, possession shall be transferred to the use without livery.

Sec. 28. By deed of bargain and sale, or by deeds of lease and release, or by covenant, to stand seized to the use or deed operating by way of covenant to stand seized to use, the possession of the bargainor, releasor or covenantor, shall be deemed heretofore to have been, and hereafter to be, transferred to the bargainee, releasee, or person entitled to the use, for the estate or interest which such person hath or shall have in the use, as perfectly as if the bargainee, releasee, or person entitled to the use, had been enfeoffed, with livery of seizen of the land intended to be conveyed by such deed or covenant.

Trust estates, how far subject to the debts, &c. of *cestui que trust.*

Sec. 29. Estates of every kind, holden or possessed in trust, shall be subject to like debts and charges of the persons to whose use, or to whose benefit they were or shall be respectively holden or possessed, as they would have been subject to, if those persons had owned the like interest in the things holden or possessed, as they own, or shall own in the uses or trusts thereof.

Grants of rents, reversions, or remainders, good without attornment.

Sec. 30. Grants of rents, or of reversions or remainders, shall be good and effectual without attornments of the tenants; but no tenant who, before notice of the grant, shall have paid the rent to the grantor, shall suffer any damage thereby.

When attornment to a stranger shall be void.

Sec. 31. The attornment of a tenant to a stranger shall be void, unless it be with the consent of the landlord of such tenant, or pursuant to, or in consequence of the judgment of a court of law, or the order or decree of a court of equity.

Effect of words, *grant, bargain, sell,* in deed whereby an estate of inheritance in fee simple is limited to grantee and his heirs.

Sec. 32. In all deeds or conveyances, whereby any estate of inheritance in fee simple, shall hereafter be limited to the grantee and his heirs, the words *grant*, *bargain*, *sell*, shall be adjudged an express covenant to the grantee, his heirs and assigns, to wit: That the grantor was seized of an indefeasible estate in fee simple, freed from incumbrances done or suffered from the grantor, (except the rents and services that may be reserved,) as also for quiet enjoyment against the grantor, his heirs and assigns, unless limited by express words contained in such deed, and that the grantee, his heirs, executors, administrators and assigns, may, in any action assign breaches, as if such covenants were expressly inserted: *Provided*, *always*, That this shall not extend to leases at rack rent, or to leases not exceeding one and twenty years, where the actual possession goes with the lease.

Mortgagee receiving full payment, to enter satisfaction upon margin of the record, at request of mortgagor.

SEC. 33. Any mortgagee of any real or personal estate in this state, having received full satisfaction and payment of all such sum or sums of money, as are really due to him by such mortgage, shall, at the request of the mortgagor, enter satisfaction upon the margin of the record of such mortgage, recorded in the clerk's office, which shall forever thereafter discharge, defeat and release the same; and shall likewise bar all actions brought or to be brought thereupon.

Penalty for neglect.

SEC. 34. And if such mortgagee, by himself or his attorney, shall not, within three months after request and tender made for his reasonable charges, repair to the said office, and there make such acknowledgment as aforesaid, he, she, or they neglecting so to do, shall for every such offence, forfeit and pay unto the party or parties aggrieved, any sum not exceeding the mortgage money, to be recovered by bill, plaint or information, in any court of competent jurisdiction in this state.

Conveyances by commissioners and sheriffs under decrees and judgments, effectual to pass title.

SEC. 35. All conveyances by commissioners and sheriffs hereafter to be made, for lands, tenements or hereditaments sold in virtue of any decree or judgment of any court within this state, shall be, and they are hereby declared to be, good and effectual, for passing the absolute title to such lands, tenements and hereditaments, to the purchasers thereof, and all persons claiming under them, any law to the contrary notwithstanding: saving to the state, and to all and every person and persons, bodies politic and corporate, their respective heirs and successors, other than the parties to such conveyances, decrees or judgments, and those claiming under them, all such right, title, interest and demand, as they, every or any of them, would have had in case this act had not been made.

CHAPTER 105.

An act, regulating the rate of interest.

Passed June 25, 1822.

Interest on contracts founded on sale or loan of goods, lands, etc.

SEC. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi, in general assembly convened*, That no person or persons whomsoever, shall take directly or indirectly, for any contract, bond, or note for the payment of money, founded on any bargain, sale, or loan of wares and merchandize, goods and chattels, lands and tenements, or any use or occupation thereof, more than eight dollars for the forbearance or giving day of payment of one hundred dollars for one year, and after that rate for a greater or less sum, or for a longer or shorter time. And if it shall be ascertained on the plea or answer of the defendant in any suit, that more than the rate of eight dollars for the forbearance or giving day of payment of one hundred dollars for one year, and after that rate for a greater or less sum, or for a longer or shorter time, be taken or received, in or by any such contract, bond or note, no interest or premium whatever, for forbearance or giving day of payment, shall be allowed or recovered on such contract, bond or note; but the principal sum only may be recovered.

Interest allowed on *bona fide* loan of money, where the contract expresses the rate agreed on.

SEC. 2. The rate of ten dollars for the forbearance or giving day of payment of one hundred dollars for one year, and after that rate for a greater or less sum, or for a longer or shorter time, may be taken, allowed and recovered on all contracts, bonds or notes in writing, signed by the debtor for the *bona fide* loan of money, expressing therein the rate of interest fairly agreed on between the parties for the use of the money so loaned: *Provided*, That if any contract, bond or note, founded on any other consideration than the *bona fide* loan of money, shall fraudulently and deceitfully express therein that the same is entered into or given for money lent, and specify a rate of interest above the sum allowed by this act, if such fraud or deception shall be discovered in any suit or action, either in law or equity, no interest or premium whatever shall be allowed or recovered on such fraudulent contract, bond or note, but the principal sum only shall be recovered. And if it shall be ascertained on the plea or answer of the defendant, in any suit, that more than the rate of ten dollars for the forbearance or giving day of payment, of one hundred dollars for one year, and after that rate for a greater or less sum, or for a longer or shorter time, be taken or received in or by any such contract, bond or note, no interest or premium whatever for forbearance or giving day of payment, shall be allowed or recovered on such contract, bond or note, but the principal sum only shall be recovered.

Rate of interest allowed on all bonds, notes, bills and accounts stated.

SEC. 3. The rate of eight dollars for the forbearance or giving day of payment of one hundred dollars for one year, and after that rate for a greater or less sum, or for a longer or shorter time, may be taken, allowed and recovered, on all contracts, bonds and notes in writing, signed by the debtor, orders, bills of exchange, and accounts stated which ascertain the sum due, after the same is due and payable; and on all judgments and decrees, founded on contracts, debts or demands, bearing interest, the rate of interest shall be the same as that allowed by law on the contract, debt or demand, on which such judgment or decree shall be founded; and on judgments and decrees in all other cases, the rate of interest shall be eight *per cent. per annum.*

Rate of interest on judgments.

Commencement.

SEC. 4. This act shall commence and be in force from and after the first day of September next.

CHAPTER 106.

An act, to render cotton receipts, promissory notes, bonds, and other writings obligatory, for the payment of money, or other thing, negotiable; and prescribing the mode of protesting foreign and inland Bills of Exchange, and the effect thereof.

Passed June 25, 1822.

Cotton receipts may be assigned.

SEC. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi, in general assembly convened*, That all such receipts as are or shall be signed by the owner or owners of cotton gins, or by the servant or agent of any owner or owners of cotton gins, who is, or shall be usually entrusted to sign such receipts, commonly called cotton receipts, whereby such owner or owners of cotton gins, his, her or their servant or agent, shall acknowledge to have received any quantity of cotton, the quantity of cotton mentioned in such receipt, shall be construed to be by virtue thereof due, and payable to such person or persons, of whom the same is acknowledged to have been received. And such cotton receipts, as aforesaid, may be assigned over in like manner as promissory notes are assignable by this act; and the person or persons to whom such cotton receipt, as aforesaid, is assigned or endorsed, may maintain an action against the owner or owners of any cotton gin, his, her or their servant or agent, who signed or shall sign such cotton receipt, or any person or persons, who shall or have endorsed the same, as in cases of promissory notes, and recover damages and costs of suit.

Cotton receipts in which no time of payment is expressed, to be taken as payable within four months after date.

Fifteen *per cent* damages for non-payment of any cotton receipt.

Not if paid within fifteen days after demand.

Or if owner or holder neglect to furnish bagging or cordage.

SEC. 2. All cotton receipts given by gin holders, their servant or agent, in which no time of payment or delivery of the cotton therein mentioned is expressed or limited, shall be taken and construed to be payable or deliverable within four months from the date or delivery of such receipts; and on the non-payment or non-delivery of any cotton specified in any receipt, expressing the time of payment or delivery thereof, at the time so expressed or limited; or on the non-payment or non-delivery of any cotton specified in any receipt not expressing the time of payment or delivery thereof, at the expiration of the said four months, the legal holder or holders of such cotton receipts shall, in either case, after lawful demand made, be entitled to recover fifteen *per centum* damages, on the value of the cotton specified in such receipt, to be recovered with costs of suit: *Provided*, That if any owner of a gin shall deliver the full amount of any cotton due on any such receipts, within fifteen days after lawful demand shall have been made by the legal holder of such cotton receipt, or by his agent: *And provided, also*, That when from default of the owner or holder of the said receipts, the necessary bagging and cordage have not been duly supplied, then, in either case, such owner of a gin shall not be liable to pay any damages whatsoever, any thing contained in this act to the contrary notwithstanding.

Money specified in written orders, shall be payable to the person in whose favor they are drawn.

Sec. 3. When any person or persons, body politic or corporate, shall by order in writing, signed by his or their proper hand, direct the payment of any sum or sums of money, in the hands of any other person or persons whomsoever, the money therein specified shall, by virtue thereof, be due and payable to such person or persons, body politic or corporate, to whom the same is drawn payable, and may be put in suit against the person or persons, body politic or corporate, who may draw the same, or against the person or persons, body politic or corporate, on whom the same shall be drawn, if accepted by him or them, and the amount thereof recovered by him or them suing for the same, with interest and costs.

Damages on protest of bills of exchange drawn on any person resident within the United States, and out of this state.

Or out of the United States.

Sec. 4. All bills of exchange drawn, or which may hereafter be drawn upon any person or persons, body politic or corporate, resident within the United States, and out of this state, which shall be returned protested, the damages on such protested bills shall be ten *per centum* on the sum drawn for; and all bills in like manner drawn upon any person or persons, body politic or corporate, resident out of the jurisdiction of the United States, being protested, the damages shall be fifteen *per cent.* on the sum mentioned in the said bills respectively, and all charges incidental thereto, with lawful interest, until the same be paid.

Damages on protest of bills of exchange drawn in this state upon any person, body politic, or corporate within same.

Sec. 5. Every bill of exchange of the sum of twenty dollars and upwards drawn, or which may hereafter be drawn in, or dated at, and from any place in this state, upon any person or persons, body politic or corporate, within the state, and payable at a certain number of days, weeks or months after date, or sight thereof, shall, in case of non-acceptance by the drawee when presented for acceptance; or if accepted, in case of non-payment by the drawee, when due and presented for payment, be protested by a notary public, in like manner as foreign bills of exchange; and the damages on such bill shall be five *per cent.* on the sum drawn for, and shall in every other respect, be regulated and governed by the same laws, customs and usages, which regulate and govern foreign bills of exchange: *Provided*, That this section shall only extend to bills of exchange drawn by any merchant, body politic or corporate, on any merchant, body politic or corporate, within this state: *And provided, also*, That such protest shall, for want, or in default of a notary public, be made by any justice of the peace, whose act in such case, shall have the same effect as if done by a notary public.

Proviso

Mode of protesting bills of exchange for non-acceptance or non-payment.

Sec. 6. Every foreign or inland bill of exchange, which shall not be accepted by the person or persons, body politic or corporate, on whom it shall be drawn, or being accepted, shall not be paid on or before the expiration of three days after it shall become due, may be protested by a notary public or a justice of the peace, as is above provided, in the form, or to the effect following, with a fair copy of the bill annexed :—

Form of protest for non-acceptance.

"Know all men that I, ———, on the ——— day of ———, at the usual place of abode of the above named ———, presented to him the bill, of which the above is a copy, and which the said ——— did not accept; wherefore I, the said ——— do hereby protest the said bill, dated at ———, this ——— day of ———." Or for non-payment after acceptance in the same form, or to the same effect, except that the words "*presented to him the said bill, of which the above is a copy, and which the said ——— did not accept*" shall be left out, and instead of them the words, "*demanded payment of the bill, of which the above is a copy, and which the said ——— did not pay*" be inserted. And the drawer, such protest being sent to him, or notice thereof in writing being given to him, or left at the place of his usual abode, within a reasonable time thereafter, shall pay the money mentioned in the bill to the person entitled to it, with interest and damages as aforesaid; and he, to whom the bill shall be payable, neglecting to procure the protest to be made, or due notice thereof to be given, shall be liable for all costs and damages accruing thereby.

Or for non-payment.

Notice to be given drawer.

Payee neglecting to protest or give notice, how liable.

If an inland bill of exchange be lost new bill to be given.

SEC. 7. In case any inland bill of exchange shall happen to be lost or miscarried, within the time limited for the payment of the same, then the drawer of such bill is and shall be obliged to give another bill of the same tenor with that first given, the person or persons to whom the same is or shall be delivered, giving sufficient security, if demanded, to the said drawer, to indemnify him against all persons whatever, in case the said bill of exchange so alleged to be lost or miscarried, shall be found again.

Person accepting such inland bill of exchange for a debt due to him, esteemed as paid, if he neglect to get same accepted, and paid or protested.

SEC. 8. If any person accept any such inland bill of exchange, for and in satisfaction of any former debt, or sum of money formally due to him or her, the same shall be accounted and esteemed a full and complete payment of such debt, if such person, accepting of any such bill for his or her debt, doth not take his or her due course to obtain payment thereof, by endeavoring to get the same accepted and paid, and make his protest as aforesaid, in case of non-acceptance and non-payment thereof.

Bonds, bills, &c. may be assigned.

SEC. 9. All bonds, obligations, bills single, promissory notes, and all other writings for the payment of money, or any other thing, shall, and may be assigned by endorsement, whether the same be made payable to the order, or assigns of the obligee or payee, or not; and the assignee or endorsee shall and may sue in his own name, and maintain any action which the obligee or payee might or could have sued or maintained thereon previous to assignment; and in all actions commenced and sued upon any such assigned bond, obligation, bill single, promissory note, or other writing, as aforesaid, the defendant shall be allowed the benefit of all want of lawful consideration, failure of consideration, payments, discounts and sets off, made, had, or possessed

Assignee or indorsee may sue in his own name.

Defendant allowed benefit of discounts or want of consideration.

against the same, previous to notice of the assignment; any law, usage or custom, in any wise, to the contrary notwithstanding, in the same manner, as if the same had been sued and prosecuted by the obligee or payee therein; and the person or persons to whom such instruments so payable are assigned, may maintain an action against the person or persons who shall have endorsed or assigned the same, as in cases of inland bills of exchange: *Provided*, That where any debt shall be lost by the negligence or default of the assignee or assignees, that the assignor or assignors shall not be liable, any such assignment notwithstanding.

Assignee may maintain action against assignor or endorser.

Proviso.

Sec. 10. Where any person or persons is or are bound in any bond, obligation, bill single, promissory note or other writing, for the payment of money or any other thing, or endorse any bill of exchange that shall be protested, and the money or other thing, or such part thereof as shall be unpaid by the principal debtor, shall be paid or tendered by the surety or endorser, the obligee or endorsee shall be obliged to assign such bond, obligation, bill single, promissory note, or other writing as aforesaid, or protested bill of exchange, to the surety paying or tendering the money or other thing, due as aforesaid; and the assignee shall and may, by virtue of such assignment and this act, have an action in his or her own name, against the principal debtor, any law, usage or custom, to the contrary notwithstanding.

When surety in bond or note or endorser of bill that shall be protested, shall pay or tender what is unpaid by principal debtor, the obligee or endorsee shall assign same to surety or endorser.

Action thereon against the principal.

Sec. 11. Nothing herein contained shall be construed to impair rights which have, or may have accrued before the passing of this act.

This act not to impair rights accrued before its passage.

CHAPTER 107.

An act, to establish a bank in the Mississippi territory.

Passed December 25, 1809.

Whereas, the establishment of a bank in this territory, would tend greatly to promote its agricultural and commercial interests,

Sec. 1. *Be it therefore enacted by the legislative council, and house of representatives of the Mississippi territory, in general assembly convened*, That a bank shall be established in the city of Natchez, the capital stock of which shall not exceed five hundred thousand dollars, divided into five thousand shares, of one hundred dollars each, and that subscriptions towards constituting said stock shall, as soon as may be, after the passing of this act, be opened in the said city, under the superintendance of Francis X. Martin, Ferdinand L. Claiborne, John Steele, Abner Green, Abijah Hunt, Samuel Postlethwaite, Ebenezer Reese, Cowles Mead, Joseph Sessions, William B. Shields, Winthrop Sargeant, Alexander Montgomery and Lyman Harding, and shall remain open until the sum of fifty thousand dol-

Bank established.

Capital stock.

Number of shares.

Subscriptions for stock.

lars shall be subscribed, and the money thus subscribed shall be paid one eighth part thereof, at the time of subscribing, three eighth parts thereof as soon as the bank may be carried into operation, when the directors shall give notice thereof, by advertisement to be published in some newspaper published in the said city of Natchez, at least thirty days previously to the day on which the subscribers shall be required to pay the same; and the remainder at two equal instalments, at sixty, and one hundred and twenty days thereafter, and as soon as the sum of fifty thousand dollars shall be subscribed, the subscribers, their successors, or assigns shall be a body politic and corporate, by the name and style of the "President and Directors, and company of the bank of the Mississippi," and shall so continue until the last day of December, one thousand eight hundred and thirty-four; and by that name shall be able and capable in law to have, purchase, receive, possess, enjoy and retain, to the use of them, and their successors, lands, tenements, hereditaments, goods, chattles and effects, of what kind, nature, or quality soever, to an amount not exceeding the sum of six hundred thousand dollars; and the same to grant, alien or dispose of at pleasure, and shall by the name aforesaid, be capable and liable in law to sue and be sued, plead and be impleaded, answer and be answered, defend and be defended, in any suit, action, matter or thing, depending in any court of law, or equity; and also, to have and keep a common seal, and the same to break, alter or amend at pleasure; and also to ordain, establish and put into execution such bye-laws, ordinances and regulations, not contrary to the laws of the United States, or of this territory as they may deem necessary and expedient for the good government of the said corporation, and generally, to do and execute all and singular, acts, matters and things which to them many appear necessary, or are incident to bodies corporate, subject to the rules and regulations hereinafter prescribed and declared.

When paid.

Subscribers to be a body corporate.

Style.

How long to continue.

Corporate powers.

Rules.

Sec. 2. The following rules and regulations, shall form and be the fundamental articles of the constitution of said corporation.

Stockholder eligible as directors.

1st. Every stockholder shall be eligible as a director, and shall at all meetings of the stockholders be entitled to one vote for every share he may hold; *Provided*, That the same shall have been transferred at least ninety days before the meeting.

Compensation of president.

2d. No director shall receive any emolument for his services as director, but it shall be lawful for the president to receive such compensation as the stockholders shall, at a general meeting, assign to him.

Board of directors, how constituted.

3d. Five directors shall constitute a board for the transaction of business, of whom the president shall always be one, except in case of sickness or necessary or unavoidable absence; in either of which cases it shall be lawful for him to name a director to preside in his stead.

4th. It shall be lawful for the directors to call a meeting of the stockholders at any time when they may deem it necessary and expedient.

Directors may call meeting of stockholders.

5th. The directors shall have power at all times to open subscriptions for stock, until the whole capital stock shall be subscribed: *Provided*, That no person shall subscribe for more than ten shares within the first ten days after the subscription shall be opened.

May open subscriptions for stock.

6th. The cashier, other officers, clerks and servants of the corporation, shall previously to entering on the duties of their offices, respectively give bond with such security, and in such form as the directors shall require, conditioned for the faithful discharge of their duties respectively.

Officers, clerks, &c. to give bond and security.

7th. The total amount of the bills emitted by the corporation, shall never exceed three times the amount of the capital stock, actually paid in, and the amount of monies actually deposited for safe keeping; in case of excess, the directors under whose administration it shall happen, shall be liable for the same, in their natural and private capacities but the corporation shall not on that account be the less liable and chargeable with such excess: such of the directors as may have been absent when the said excess was contracted or created may respectively exonorate themselves from being so liable, by forthwith giving notice of the fact, and of their absence or dissent, to the stockholders at a general meeting, which they shall have power to call for that purpose.

Restriction in the amount of bills emitted.

8th. The corporation shall not take more than six per centum per annum for, and upon its loans and discounts.*

(*See chapter 109, sec. 1.)

9th. The stock of the corporation shall be assignable and transferable according to such rules as may be made in that behalf by the directors.

Stock assignable.

10th. All bills and notes which may be issued by order of the corporation, signed by the president and counter-signed by the cashier, shall be binding and obligatory upon the corporation.

Bills, how signed, &c.

11th. Half yearly dividends shall be made of so much of the profits of the bank, as shall appear to the directors advisable.

Dividends.

Sec. 3. If any person or persons shall become indebted to said corporation as maker or endorser of any note, bill or bond, expressly made negotiable and payable at the said bank (and no bill note or bond, shall be negotiable at said bank unless it shall be so expressed in the face of such bill, note or bond) and shall delay payment thereof, it shall be lawful for the corporation after having given at least ten days previous notice thereof, to move for judgment and the award of execution against such debtor, in any court of record within this territory. *Provided nevertheless*, That if the defendant or defendants, shall appear and contest the claim, the court shall instanter, impannel a jury to try the issue, and thereon give judgment accordingly.

Manner of obtaining judgment on notes, bills and bonds made negotiable and payable in bank.

Sec. 4. As soon as the sum of fifty thousand dollars shall be subscribed with the superintendants, it shall be lawful for them to rent or lease a house, and fit it for the business of the bank;

to procure paper, plates, chests, books, stationary and whatever may be necessary to begin the operations of the bank; and as soon as they shall have made such progress therein, as will justify the measure, call a meeting of the stockholders in the city of Natchez, of which they shall give public notice for twenty days; and at such meeting of the stockholders they shall proceed to the election of thirteen directors, who shall continue in office until the first Monday in January, one thousand eight hundred and twelve; when there shall be a new election, and so on, in each and every year, on the same day until the dissolution of the corporation; and the directors then appointed, shall be in office for one year: immediately after each election, the directors shall meet and choose one of their own body as president. In case of death, resignation or absence of a director out of the territory, for upwards of six months, the vacancy may be supplied by a majority of the board.

Stockholders to elect thirteen directors.

Time of holding election.

Directors to choose president.

Vacancies, how supplied.

CHAPTER 108.

An act, supplemental to an act entitled "An act, to establish a bank in the Mississippi territory."

Passed February 4, 1818.

Style of the body corporate changed.

Sec. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi in general assembly convened,* That (upon petition of the president, directors and company of the bank of the Mississippi, and surrender of such rights secured to them by the charter of said bank, as are inconsistent with the provisions of this act) the said body politic and corporate shall hereafter be known by the name and style of "The president, directors and company of the bank of the state of Mississippi," instead, and in lieu of "The president, directors and company of the bank of the Mississippi."

Subscription for stock on behalf of the state.

Sec. 2. The person exercising the government of this state for the time being, shall at any time (when authorised by a resolution of the general assembly to that effect) be entitled to subscribe on behalf of the state, for any number of shares, in the capital stock of said president, directors and company, not exceeding in the whole number of shares subscribed on behalf of the state, one fourth the number then otherwise subscribed of said stock, and the shares so subscribed at any time on behalf of the state, shall, on the first day of July or of January, whichever may first happen, after payment of the amount so subscribed, be incorporated with the other stock of said president, directors and company, and the state entitled to equal dividend thereon.

Governor to appoint five directors.

Sec. 3. So soon as any subscription, on behalf of the state, shall be made, the person exercising the government of this state, may and shall, annually thereafter, appoint five persons being stockholders, directors of said bank; and the qualified stockholders of the capital of said bank, other than the state, in lieu of thirteen directors, shall elect eleven, in the manner prescribed in the act to which this is a supplement,* and in case of the death, resignation or absence of any or either of said five directors out of the state for more than six months, the vacancy may be supplied by the same authority.

Stockholders to elect eleven in lieu of thirteen.

(*See chapter 107, sec. 4.)

Sec. 4. The capital stock of said president, directors and company, may be extended to three millions of dollars; and that said corporation may continue until the last day of December, one thousand eight hundred and forty.

Capital stock may be extended.

How long corporation may continue

Sec. 5. It shall be lawful for said president and directors to establish offices wherever they shall think fit, within this state, for the purpose of discount and deposit only; and upon the same terms and in the same manner, as shall be practised at the bank; and to commit the management of said offices, and the making of said discounts, to such persons, and subject to such regulations as they may deem proper, such regulations not being contrary to law, or the constitution of said bank: provided, That not more than thirteen, nor less than seven managers or directors of every such office shall be annually appointed by the directors of the bank, to serve for one year.

Offices of discount and deposit may be established.

Directors of such offices, how appointed, &c.

Sec. 6. In consideration of the extension of privileges hereby granted to said corporation, and in order to extend the benefits of the institution in this state, it shall be the duty of said president, directors and company, as soon as may be, after the passing this act, to open books of subscription for five hundred shares of the capital stock of said bank, in the town of Port Gibson, in the county of Claiborne, under the superintendance of Israel Loring, Daniel Vertner and Benjamin Smith; one eighth part thereof to be paid at the time of subscribing, three eighth parts thereof in equal instalments, at sixty, and one hundred and twenty days thereafter, and the remaining four eighths at such time thereafter, as said president and directors may direct, which shall remain open for the term of thirty days, unless the aforesaid amount of capital stock be sooner subscribed. And it shall also be the duty of said president, directors and company, in like manner, and at the same time, to open books of subscription for five hundred shares of said capital stock in the town of Woodville in the county of Wilkinson, under the superintendance of Richard Butler, Edward Randolph, Charles Stewart and Moses Liddell, and under the same terms and limitations as shall be established for the aforesaid subscription at Gibson Port. And as soon as may be, after the aforesaid amounts of capital stock shall have been subscribed, and one half thereof paid into the bank, it shall be the duty of said president and directors to establish an office of discount and deposit at said towns of Port Gibson and Woodville, respectively; provided, said president and directors shall give to the subscribers at least thirty days notice of the time at which payment of the last four-

Books of subscription for five hundred shares to be opened at Port Gibson.

When to be paid.

Books of subscription for five hundred shares to be opened at Woodville.

When offices shall be established at Port-Gibson and Woodville.

eighths of said capital stock will be required; said notice to be given by publication in some newspaper in the city of Natchez. And it shall be the duty of the directors of the bank to increase the quantity of capital, at its offices of discount and deposit, established by this act, or which may hereafter be established, whenever the business at such offices will justify a belief that it can be used with equal advantage to the stockholders as the capital used at the mother bank; provided, that such increase shall not exceed five hundred thousand dollars at any one office.

Stock may be increased at said offices.

Provision for an office of discount and deposit, on or near Pearl river.

Sec. 7. As soon as it shall be required by the legislature of this state, it shall be the duty of said president, directors and company, to open books of subscription for one thousand shares of said capital stock, near the court house, in the county of Marion, in the same manner, and under the same regulations and restrictions, as the books of subscription shall have been opened at Gibson Port and Woodville, as before directed. And on the subscription and payment into bank, of the amount of said last mentioned capital stock, and on the requisition of the legislature, it shall be the duty of said president and directors, to establish an office of discount and deposit at such place, on or near Pearl river, as said president and directors may deem most suitable.

What stockholders may vote by proxy.

Sec. 8. All stockholders, who are residents within the United States, and none others, may vote by proxy; provided, such proxy be a citizen and resident of this state.

What amount of property may be held by the corporation.

Sec. 9. Said president, directors and company, are hereby made able and capable in law to have, purchase, receive, possess, enjoy, and retain to themselves and their successors, lands, rents, tenements, hereditaments, goods, chattels and effects, to an amount not exceeding their capital stock, and one half more in the whole including the amount of said capital stock, and the same to grant, demise, sell, alien and dispose of.

Restriction in trade of the corporation, in personal estate.

In real estate.

Sec. 10 Said corporation shall not, directly or indirectly, deal or trade in any thing, except discount, bills of exchange, current money, or in the sale of goods really and truly pledged for money lent and not redeemed in time, or goods which shall be the proceeds of its lands. And the lands, tenements and hereditaments, which it shall be lawful for said corporation to hold, shall be such only, as may be requisite for its immediate accommodation, in relation to its convenient transaction of business, and such as shall have been *bona fide* mortgaged to it by way of security conveyed to it in satisfaction of debts previously contracted in the course of its dealings, or purchased at sales upon judgments, which shall have been obtained for such debts.

Sec. 11. If any person shall become indebted to said corporation as the maker of any note, bill or bond expressly made payable at any office of discount and deposit, (and no note, bill or bond, shall be negotiable at such office, unless it shall be so expressed on the face of such note, bill or bond) and shall delay payment thereof, it shall be lawful for said corporation, after having given at least ten days previous notice thereof, to move for judgment and the award of execution against such debtor in any court of record in this state, provided, that if the defendant or defendants shall appear and contest the claim, the court shall *instanter* impannel a jury to try the issue thereon, and give judgment accordingly.

Mode of obtaining judgment on notes, bills and bonds, made payable at offices of discount and deposit.

Sec. 12. In case it shall at any time happen, that an election of directors should not be made, upon any day, when pursuant to the act to which this is a supplement;* it ought to have been made, the said corporation shall not for that cause be deemed dissolved, but it shall be lawful on any other day to hold and make an election of directors in such manner as shall be regulated by the by-laws of said corporation, and the former president and directors shall continue in office until such new election shall take place.

Provision in case election of directors be not made at the stated time.

(See chapter 107. sec. 4.)

Sec. 13. The governor of the state shall be furnished, from time to time, as often as he may require it, not exceeding once in every month, with statements of the amount of the capital stock of said corporation and of the debts due to the same; of the monies deposited; of the notes in circulation, and the cash on hand, and shall have a right to inspect such general accounts in the books of the bank as shall relate to such statements. And the legislature shall be furnished annually, during their session, if they require it, with like statements, and they or a committee of them for that purpose appointed, shall have a right to inspect such general accounts in the books of the principal bank or any of its branches, as shall relate to such statements; provided, it shall not be understood to imply a right of inspecting the accounts of any individual, co-partnership, body politic or corporate, with said bank.

Governor to be furnished with statements of the amount of capital stock, &c.

May inspect accounts in books.

Legislature to be furnished with like statements.

May inspect accounts in the books.

Sec. 14. The bills or notes of said corporation, originally made payable, or which shall become payable, on demand, shall be receivable in all payments to this state, unless otherwise directed by act of the legislature.

Notes of corporation receivable in payments to the state.

Sec. 15. All the rights, privileges, advantages, immunities, provisions and restrictions in the act, to which this is a supplement, and not inconsistent with this act, are hereby continued to, and vested in, the corporation of the aforesaid president, directors and company.

Provisions of former act continued.

Sec. 16. No other bank shall be established by any further law of this state, during the continuance of the aforesaid corporation, for which the faith of the state is hereby pledged: Provided however, that the legislature may, from time to time,

No other bank to be established.

Number of directors may be increased.

increase the number of directors of the aforesaid bank, to be elected by the stockholders, and the person exercising the government of this state, in the proportion herein before established, as near as may be, so that the whole number of directors shall not exceed twenty-four.

Condition on which this act shall be in force.

SEC. 17. This act shall commence and be in force provided the said president and directors assent thereto, on or before the sixth day of February, otherwise the same shall be void.

CHAPTER 109.

An act, to amend the charter of the bank of the state of Mississippi.

Passed June 30, 1822.

Notes having more than one hundred and eighty days to run, may be discounted at the rate of eight *per cent. per annum.*

SEC. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi, in general assembly convened,* That the president and directors of the bank of the state of Mississippi and its branches, be permitted to discount notes, made payable at said bank, according to the provisions of the charter of said bank, having more than one hundred and eighty days to run, at the rate of eight per cent. per annum: *Provided,* That said notes shall be subject to one renewal, if the maker of the note desire it, and the endorsers continue to be satisfactory to the president and directors of said bank.

Condition on which foregoing provision to take effect.

SEC. 2. The foregoing provision shall have effect on the president and directors of said bank, by a resolution of their board, making known to the governor of this state, for the time being, their assent thereto, within ninety days after the passage of this act.

CHAPTER 110.

An act, for the relief of certain mechanics.

Passed February 5, 1819.

Lien on buildings in Natchez for labor or materials.

SEC. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi, in general assembly convened,* That all, and every dwelling house, store, shop or other building, constructed and erected, within the city of Natchez, after the first day of March, in the year of our lord one thousand eight hundred and nineteen, shall be subject to the payment contracted for, or, by reason of any work done, or materials found and provided by any brick maker, brick layer, mason, lime merchant, carpenter, painter and gilder, ironmonger, blacksmith, plasterer and lumber merchant; or any other person or persons, employed in furnishing materials for, or in the constructing of such dwelling house, store, shop, or other building, before any other lien, which originated subsequent to the commencement thereof; but if such dwelling house, store, shop or other building, should not sell for a sum of money, sufficient to pay all the demands for work and materials, the same shall be apportioned according to the several demands. But such lien shall not continue longer than two years from the commencement of such dwelling house, store, shop or other building, unless an action for the recovery of the same be instituted, or the claims filed in the office of the clerk of the county court of Adams county, within six months after performing the work, or furnishing the materials.

Limitation.

SEC. 2. Every mechanic, who intends to avail himself of the benefit of this act, shall within three months after making a contract for the performance of any work contemplated by this act, or materials to be furnished, file in the clerk's office of the city of Natchez, a written contract of the agreement with his employer; which contract, the clerk shall record in a book to be procured and kept for that purpose. And the clerk shall receive twelve and an half cents, for every hundred words recorded under this act; and it shall be the duty of every person holding such lien, on receiving payment, to repair to the clerk's office, and enter satisfaction on the record, in the manner prescribed by law in relation to mortgages, and on the same terms, conditions and penalties.

Contract to be filed in clerk's office.

To be recorded.

Clerk's fee for recording.

Person receiving payment, to enter satisfaction on record.

CHAPTER 111.

An act, for the relief of mechanics.

Passed February 9, 1821.

SEC. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi, in general assembly convened,* That all and every dwelling house, store, shop or other building, constructed and erected within the town of Monticello, after the passage of this act, shall be subject to the payment contracted for, or by reason of any work done or materials found and provided by any brick-maker, brick-layer, mason, lime merchant, carpenter, joiner, painter, gilder, ironmonger, blacksmith, plasterer and lumber merchant, or any other person or persons employed in furnishing materials for, or in the constructing of such dwelling house, store, shop or other building, before any other lien which originated subsequent to the commencement thereof; if such dwelling house, store, shop or other building should not sell for a sum of money sufficient to pay all the demands for work and materials, the same shall be apportioned according to the several demands; but such lien shall not continue longer than two years from the commencement of such dwelling house, store, shop or other building, unless an action, for the recovery of the same be instituted, or the claims filed in the office of the clerk of the county court of Lawrence county, within six months after performing the work, or furnishing the materials.

Lien on buildings in Monticello for labor or materials.

Limitation.

SEC. 2. Any mechanic who intends to avail himself of the

Contract to be filed in clerk's office of county of Lawrence.
To be recorded.
Clerk's fee for recording.
Person receiving payment to enter satisfaction on record.

benefit of this act shall, within three months after making a contract for the performance of any work contemplated by this act, or materials to be furnished, file in the clerk's office of the county of Lawrence, a written contract of the agreement with his employer, which contract the clerk shall record in a book to be procured and kept for that purpose; and the clerk shall receive the sum of two dollars for such record; and it shall be the duty of every person holding such lien, on receiving payment, to repair to the clerk's office, and enter satisfaction on the record, in the manner prescribed by law in relation to mortgages, and on the same terms, conditions and penalties.

Provisions of act extended.

SEC. 3. The provisions of this act be, and the same are hereby extended to all cases of similar nature or kind within this state.

CHAPTER 112.

An act, to define the boundaries of the several counties of this state.

Passed June 29, 1822.

Dividing line between the counties of Adams and Wilkinson.
Wilkinson and Franklin.

SEC. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi, in general assembly convened*, That the river Homochitto shall be the dividing line between the counties of Adams and Wilkinson, from its mouth to its intersection with the basis meridian line; and from thence the said river shall be the dividing line between the counties of Wilkinson and Franklin, to the mouth of Foster's creek, on said river.

The basis meridian line shall be the dividing line between the counties of Adams and Franklin.

Jefferson and Claiborne.

The dividing line between the counties of Jefferson and Claiborne shall be as follows, to wit: beginning on the bank of the Mississippi river, at the lower end of the Petit Gulf Hills, running thence a direct course to the most northern part of the tract of land known by the name of Robert Trimble's, on Tabor's creek of Bayou Pierre; continuing the same course until it shall intersect the south fork of Bayou Pierre, at Elijah L. Clarke's wagon ford on said creek, thence up said creek to the township line between townships nine and ten, thence pursuing said line east to the old Choctaw boundary line.

Warren and Claiborne.

The river Big Black, from its mouth to the old Choctaw boundary line, shall be the dividing line between the counties of Claiborne and Warren.

Warren and Hinds.

The dividing line between the counties of Warren and Hinds shall be as follows, to wit: Beginning at the mouth of the Yazoo river, thence up the same to where the former county line strike said river, thence from said place up the said river with its meanders, a distance that shall equal five miles in a direct line, thence south thirty degrees east, to Big Black river, thence down the same to the old Choctaw boundary line.

The dividing line between the counties of Wilkinson and

Wilkinson and Amite.

Amite shall be as follows, to wit: Beginning at the thirty mile post, east of the river Mississippi, on the line of demarkation, and running with said township line, due north, until it intersects the north east branch of Foster's creek, then down said creek to its junction with the Homochitto.

Amite and Franklin.

The dividing line between the counties of Amite and Franklin shall be as follows, to wit: Beginning at the mouth of Foster's creek, on the Homochitto river, thence up the said river with its meanders to the fourth township line; thence with the said township line, due east, till it shall intersect the dividing ridge between the waters of the rivers Homochitto, and east fork of Amite, thence with the summit of said ridge, till it intersects the township line between the sixth and seventh ranges.

Amite and Pike—Amite and Lawrence—Franklin and Lawrence.

The second range line beginning on the line of demarkation, at the sixty mile post, east from the Mississippi river, being the first range of townships west of Tansepiho, running due north, shall be the dividing line between the counties of Amite and Pike, and Amite and Lawrence, and between Franklin and Lawrence.

Pike and Marion.

The dividing line between the counties of Pike and Marion shall be as follows, to wit: Beginning on the line of demarkation at the ninety mile post east from the Mississippi river, running thence due north on the township line to its intersection with the summit of the dividing ridge between the waters of Bogue Chitto and Pearl river, after the same crosses the waters of M'Gee's creek, thence along said ridge until it intersects the southern boundary of Lawrence county.

Pike, Marion and Lawrence.

The dividing line between the counties of Pike, Marion and Lawrence, shall be as follows, to wit: Beginning on the Franklin county line where the middle section line of the fifth township intersects the same, thence east along said line to its intersection with the eastern boundary line of the counties of Marion and Lawrence.

Marion and Perry.

The dividing line between the counties of Marion and Perry, shall be the range line between the thirteenth and fourteenth ranges from the line of demarkation, to the northern boundary of the fifth township line.

Lawrence and Covington.

The dividing line between the counties of Lawrence and Covington shall be as follows, to wit: Beginning on the eastern boundary of the eighteenth range line, where it intersects the southern boundary line of Lawrence county, thence north along said range line, to its intersection with the dividing ridge between the waters of Leaf and Pearl rivers, thence along the summit of said ridge to its intersection with the Choctaw boundary line.

Perry and Green.

The dividing line between the counties of Perry and Green, shall be the line that divides the eighth and ninth ranges from the line of demarkation, to the northern boundary of the fifth parallel township line.

Covington and Wayne.

The dividing line between the counties of Covington and Wayne, shall be the eastern boundary line of the twelfth range of townships, from the northern boundary of the fifth parallel township, running north to the Choctaw boundary line.

Hancock, Marion and Perry —Jackson and Green.

(*See chapter 114.)

The line of demarkation running east, shall be the dividing line between the counties of Hancock, Marion and Perry, and between the counties of Jackson and Green,* until it shall intersect Leaf river, and from thence the boundary between Green and Jackson, shall be down Leaf river, till it shall intersect the first parallel township line, south of the line of demarkation, thence east with said township line to the eastern boundary line of the state.

Perry and Covington, Green and Wayne.

The fifth parallel township line from the eighteenth range line, running due east to the eastern boundary line of the state, shall be the dividing line between the counties of Perry and Covington, and between the counties of Green and Wayne.

Hancock and Jackson.

The dividing line between the counties of Hancock and Jackson shall be as follows, to wit: Beginning at the middle of the bay of Billuxie, thence running a direct course, to where the western boundary of the ninth range line intersects the line of demarkation.

County of Hinds.

Hinds and Franklin.

The county of Hinds shall consist of all that tract of country lately acquired from the Choctaws, except that part laid off to the county of Warren, from the Yazoo to Big Black rivers herein before described, and excepting also that part which indents the county of Franklin on the north-east corner of said county, which shall hereafter be annexed to, and form a part of, the county of Franklin; and the dividing line between the counties of Hinds and Franklin, shall be a straight continuation of the dividing line between the counties of Jefferson and Franklin, until it intersects a point precisely north of the dividing line between the counties of Lawrence and Franklin.

County of Monroe.

The county of Monroe shall consist of all that tract of country lying east of the Tombigby river, and within the limits of this state.

CHAPTER 113.

An act, to amend an act, entitled, "An act to define the boundaries of the several counties of this state."

Passed January 21, 1823.

Dividing line between the counties of Adams and Jefferson.

Sec. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi in general assembly convened*, That the dividing line between the counties of Adams and Jefferson, shall be hereafter as follows: Beginning on the Mississippi river at the upper side of E. Rose's old settlement, and running from thence a direct line to Stover's mound, near Fairchild's creek; thence running up the south branch of said creek, following its meanders, to a place formerly known as John Griffin's still-house spring, now George Selser's spring; thence a direct line to the north east corner of Edmund Andrew's cotton gin; thence a due east course until it intersects the basis meridian line; thence pursuing said line south to the north boundary of township number seven; thence between the counties of Jefferson and Franklin, running due east on the line of the north boundary of township number seven, until it intersects the old Indian boundary line; thence running between the counties of Jefferson and Hinds, along said old Indian boundary, north, to where the north boundary line of township number nine intersects said line.

Jefferson and Franklin.

Jefferson and Hinds.

Sec. 2. So much of the act to which this is an amendment, as comes within the purview and meaning of this act, be, and the same is hereby repealed.

Repealing clause.

CHAPTER 114.

An act, to alter the boundary line between the counties of Green and Jackson.

Passed January 16, 1823.

Sec. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi in general assembly convened,* That the boundary line between the counties of Green and Jackson, shall, from and after the passage of this act be as follows, to wit: Beginning on the Pascagoula river, where the first township line south of the line of demarkation, crosses said river; thence along said township to its intersection with the dividing line between the counties of Jackson and Hancock; thence north along said line to the line of demarkation; any law to the contrary notwithstanding.

Boundary line between the counties of Green and Jackson.

CHAPTER 115.

An act, to divide the county of Covington, and form a new county out of the same.

Passed January 17, 1823.

Sec. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi in general assembly convened,* That all that tract of country lying within the following boundaries, to wit: beginning on the eastern boundary of the eighteenth range line, where it intersects the southern boundary line of Lawrence county; thence north along said range line, to its intersection with the dividing ridge between the waters of Leaf and Pearl rivers; thence along the summit of said ridge to its intersection with the Choctaw boundary line; thence eastward along the said Choctaw boundary line, to the eastern boundary of the fourteenth range line; thence south along the said range line to the fifth parallel township line, to where the same intersects the eighteenth range line, shall form a new county, to be called and known by the name of Bainbridge.

County of Bainbridge established.

Sec. 2. The circuit courts shall be held, in the county of Bainbridge twice in each year, to wit: on the second Mondays

Courts, when held.

in March and September, and said courts may be held six judicial days at each term; and the county courts on the first Mondays of January, April, July and October, and may be holden three days at each term if business so long requires, and no longer.

At what place held

SEC. 3. Until the commissioners hereinafter named, shall fix upon a permanent site for the seat of justice for the said county of Bainbridge, the place of holding courts therein shall be at the house of John Bond.

Process issued, not affected by this act.

SEC. 4. All process now issued, and not returned to the county of Covington, against defendants residing in the county of Bainbridge, shall be executed and returned in the same manner, as though this act had not passed, and the circuit court of Covington county at the first term after the passage of this act, shall cause all suits or causes whatever, depending in said court, and undetermined, with all original papers thereunto belonging, where the defendant or defendants reside in the county of Bainbridge, to be transferred to the circuit court of the said county of Bainbridge, there to be acted on, as though the same had originated therein.

Suits, causes, and papers, how transferred.

Commissioners appointed to fix on seat of justice.

SEC. 5. James Gilleland, Abb L. Hatten, Lorenzo Granbury, James Tate, and John Bond, be, and they are hereby, appointed commissioners; and they, or a majority, shall meet so soon as may be, for the purpose of fixing on a public site for the seat of justice of said county: *provided however*, the commissioners shall fix the seat of justice, within three miles of the centre of said county.

Bainbridge attached to second circuit.

SEC. 6. That the said county of Bainbridge shall be, and the same is, a part of the second circuit of the state of Mississippi.

Courts in county of Covington, where held.

SEC. 7. Until the commissioners hereinafter appointed shall fix on a permanent site for the seat of justice in the county of Covington, the courts in said county shall be held at the house of William M'Gehee, at the times already appointed by law for holding courts in said county.

Commissioners appointed to fix on seat of justice.

SEC. 8. John C. Thomas, Nathaniel Jones, John Evans, John Bridges, senior, and William M'Gehee, be, and are hereby, appointed Commissioners; and they, or a majority of them, shall meet, so soon as may be, for the purpose of fixing on a public site for a permanent seat of justice for said county; and the place designated by a majority of said commissioners, shall be the seat of justice for said county: *Provided, however*, said commissioners shall fix the seat of justice within three miles of the centre of said county.

CHAPTER 116.

An act, to divide the county of Hinds, and form new counties out of the same, and for other purposes.

Passed January 21, 1823.

County of Yazoo established.

Sec. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi in general assembly convened*, That all that tract of country within the following boundaries, to wit: Beginning at a point on Big Black river, where the northern boundary line of township seven intersects the same; thence due east along said line to where it strikes Pearl river; thence up said river to where the Choctaw boundary line crosses the same; thence along said boundary line to where it strikes the Mississippi river; thence down said river to the northern boundary line of Warren county; thence along said boundary line to Big Black river; thence with the same to the beginning; shall constitute a county, to be called and known by the name of Yazoo.

Courts, when holden.

Sec. 2. Courts shall be holden in the county of Yazoo, twice in each year, at the place provided for by this act, for that purpose, at the time and in the manner following, to wit: The circuit courts on the third Monday in February and August, in each year—and the county courts on the second Monday in January, April, July and October; and the said circuit courts may be holden six judicial days at each term, if business so long requires, and no longer.

At what place holden.

Sec. 3. The place of holding courts in the county of Yazoo, shall be at the house of David Beatty, on Big Black river.

Yazoo and Hinds to have, each, one representative.

Sec. 4. Hereafter the county of Hinds shall be entitled to one representative, and the county of Yazoo to one representative, in the house of representatives of this state—any law to the contrary notwithstanding.

Yazoo annexed to first judicial district.

Sec. 5. The county of Yazoo shall be annexed to the first judicial district; and it shall be the duty of the judge, attending the courts of the first judicial district, to hold courts in the said county of Yazoo, at the term provided for by this act.

Writ of election for sheriff and coroner in Yazoo.

Sec. 6. It shall be the duty of the governor to issue a writ of election, directed to a justice of the county court of said county of Yazoo, to meet at the house of David Beatty, at a time therein mentioned, for the purpose of electing a sheriff and coroner for said county; which said election shall be held and conducted according to the law regulating elections.

County of Copiah established.

Sec. 7. All that tract of country lying and being within the following limits and boundaries, to wit; Beginning on the eastern boundary line of [illegible] county, where the southern boundary of township three strikes the same; thence east along said line to the Choctaw boundary line; thence southwardly with the same to the northern boundary of Covington county; thence westwardly along the old Choctaw boundary line to the southwest corner of the same; thence northwardly with the old Choctaw boundary to the beginning; shall form a new county, to be called and known by the name of Copiah.

Copiah attached to first judicial district.

Courts, when and where holden.

SEC. 8. The county of Copiah shall be attached to, and form a part of, the first judicial district; and the courts for said county shall be holden at the house of John Core, or at such other convenient place as the county court of said county, may determine upon: *Provided*, it be not more than six miles from the centre of said county, at the time and in the manner following, to wit: The circuit courts on the fourth Mondays in February and August, in each year; and the county courts on the second Mondays in March, June, September, and December. The said circuit courts may be holden six judicial days at each term, if business so long requires, and no longer.

Copiah to have one representative.

SEC. 9. The county of Copiah shall be entitled to one representative in the house of representatives of this state, to be elected at the time and in the manner prescribed by the law regulating elections.

Senatorial district.

SEC. 10. The counties of Jefferson, Copiah, Hinds and Yazoo shall constitute one senatorial district, and shall be entitled to one senator in the general assembly of this state.

Election districts established.

SEC. 11. In addition to the place appointed by law for holding elections in said county, there shall be two others, to wit: At the house of Vincent Chance, on the Bayou Pierre, and at the house of Lewis Parker.

Writ of election for sheriff and coroner in Copiah.

SEC. 12. It shall be the duty of the governor to issue his writ of election, directed to a justice of the county court of said county of Copiah, for the election of a sheriff and coroner for said county; which election shall be conducted conformably to the law regulating elections.

Also in Bainbridge.

SEC. 13. It shall be the duty of the governor to issue a writ of election, directed to a justice of the county court of Bainbridge county, to meet at the house of John Bond, at a time therein mentioned, for the purpose of electing a sheriff and coroner for said county; which elections shall be held and conducted according to the law regulating elections in this state.

CHAPTER 117.

An act, to appoint commissioners to locate the lands given by the United States to this state, for a seat of government.

Passed February 12, 1821.

Commissioners appointed to locate lands for seat of government.

SEC. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi, in general assembly convened*, That Thomas Hinds, James Patton and William Lattimore, are hereby appointed commissioners to locate two sections of land in the country lately ceded to the United States by the Choctaw Indians, as soon as the same may be surveyed, for the purpose of a seat of government for this state; the same to be located within twenty miles of the true centre of the state, embracing the whole extent of the state, as well that part which is now within the jurisdiction of the state, as that part now occupied by Indian tribes; and in case all the commissioners may not serve or agree in their opinion, then a majority of the whole number may make such location.

To make report.

SEC. 2. The said commissioners shall make a report to the next legislature of their proceedings in the premises, with such information or intelligence as they may be pleased to communicate, shewing the best points for the erection of a state house, with all the relative advantages of the several prominent points within the location.

CHAPTER 118.

An act, to amend the act, entitled "An act, to appoint commissioners to locate the lands given by the United States to this state for a seat of government."

Passed November 28, 1821.

What half sec-tions, commissioners may locate for seat of government.

SEC. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi in general assembly convened*, That Thomas Hinds and William Lattimore, commissioners appointed by the act to which this is a supplement, and Peter A. Vandorn be, and they are hereby authorised and empowered to locate the east halves of sections three and ten, and the west halves of sections two and eleven, in township five, range one, east of the basis meridian, as a permanent seat of government for this state.

And lay off town thereon.

SEC. 2. The said commissioners shall be, and they are hereby authorised and empowered to lay off a town on such part of the location so made, and on such plan as the said commissioners may deem most advisable.

Name of town.

SEC. 3. The town so laid out shall be called and known by the name of Jackson, in honor of major general Andrew Jackson.

Commissioners may employ surveyor

His compensation.

SEC. 4. The said commissioners are hereby authorised and empowered to employ one or more practical scientific surveyors, and as many other persons as may be necessary, to lay off said town, who shall receive such compensation as the commissioners may deem equitable and just.

To appoint superintendent of buildings.

SEC. 5. The said commissioners shall appoint a person of character and probity as a superintendent of buildings, whose duty it shall be to employ one or more suitable persons to build a commodious house on an economical plan for the reception of the general assembly at the next regular session.

To designate lot for buildings, &c.

SEC. 6. The said commissioners shall designate the lot on which the said temporary buildings shall be erected, and shall also designate the lots on which a right of preference shall issue, as hereinafter directed.

Also timber for same.

Power and duty of superintendent in relation to timber.

SEC. 7. The said commissioners shall designate the timber which shall be made use of in the erection of the public buildings, and it shall be the duty of the superintendent of buildings to preserve all the timber belonging to the state from any improper waste, and to institute actions of trespass in his own name for the use of the state, against any person or persons who may in any manner abuse or destroy the same, in any court having cognizance thereof.

Superintendent may grant right of preference to ten lots.

Condition.

SEC. 8. The superintendent of buildings shall be empowered to grant a right of preference to ten of the lots in said town to such responsible persons as he may think proper, on condition that the occupant or occupants shall, on or before the first Monday of November next, build a neat log or frame house thereon, not less than thirty feet in length, and enter into an obligation in writing, to pay to the treasurer of the state within two years from the date of the certificate of pre-emption, so much money as will be equal to an average of all the lots sold in the square in which the occupant or occupants reside.

Commissioners to give instructions.

SEC. 9. It shall be the duty of the said commissioners to prescribe the mode and manner in which the superintendent of buildings shall erect the house required for the reception of the general assembly; and the said commissioners shall give written instructions relative to all the duties required of him by this act, except in the case of prosecutions.

Appropriation.

SEC. 10. The sum of five thousand dollars shall be, and the same is hereby appropriated for the purpose of carrying this act into effect; which sum, or any part thereof, shall be paid to the order of the said commissioners on the warrant of the auditor of public accounts.

SEC. 11. Thomas Hinds and William Lattimore shall be allowed the sum of ten dollars per day for every day they have been necessarily employed in complying with the requisitions of the act to which this is a supplement; which said sum shall be paid out of the treasury of the state, on the warrant of the auditor of public accounts.

Allowance to Thomas Hinds and William Lattimore.

Sec. 12. The superintendent of buildings, whose appointment is authorised by this act, shall receive the sum of sixty dollars per month, in full compensation for the services required of him.

How much superintendent to receive per month.

Sec. 13. The commissioners shall have power to permit the first settlers in the said town of Jackson to use as much of the public timber as may be essentially necessary for immediate occasion, on such part of the public land as the said commissioners may deem most expedient.

First settlers may be permitted to use timber.

Sec. 14. The said commissioners shall advertise for sale such number of the lots as they may think expedient in three of the most public Gazettes in the state; which sale shall be held during the first session of the general assembly held in said town.

Lots to be advertised for sale.

Sec. 15. It shall be the duty of the said commissioners to select and reserve a suitable lot on which to build a court-house, in case the said town of Jackson should hereafter be the seat of justice for the county in which the said town may be situated.

Lot to be reserved for court house.

Sec. 16. It shall be the duty of the said commissioners to select and reserve an eligible lot or lots on which to locate an academy or college, whenever the general assembly may think proper to do so.

Also for academy.

CHAPTER 119.

An act, to repeal an act for the removal of the seat of government, passed February 7th, 1821, and for other purposes.

Passed June 29, 1822.

Sec. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi, in general assembly convened*, That the law providing for the removal of the seat of government, passed February 7th, 1821, be, and the same is hereby repealed.

Act repealed.

Sec. 2. The subsequent sessions of the general Assembly of this state, shall be held at the town of Jackson, in Hinds county.

General assembly to sit at Jackson

Sec. 3. The office of secretary of state, the office of auditor of public accounts, and the treasury of the state, shall be removed to the said town of Jackson, on or before the fourth Monday in December next.

Offices of the secretary of state, auditor and treasurer to be removed.

Sec. 4. The next session of the general assembly shall commence on the fourth Monday in December next.

Commencement of the next session.

CHAPTER 120.

An act, further to amend an act, entitled "An act, to appoint commissioners to locate the lands given by the United States, to this state, for a seat of government."

Passed June 30, 1822.

Plan of the town of Jackson, as laid out by the commissioners, approved.

Sec. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi, in general assembly convened,* That the plan of the town of Jackson, as laid out and established, by Thomas Hinds, William Lattimore, and Peter A. Vandorn, commissioners, appointed by the act, entitled "An act, to appoint commissioners to locate the lands given by the United States, to this state, for a seat of government," and the act to amend said act, be, and the same is hereby approved, and the said town established accordingly.

Certified copy of plan to be recorded, &c.

Sec. 2. The said commissioners shall cause a copy of the plan of said town to be recorded in the office of the clerk of the county court, or in that of the register of the probate court of Hinds county, with the certificate and signature of said commissioners thereto; and another copy, so certified and signed, to be deposited in the office of secretary of state without delay.

Acts of a majority of the commissioners valid.

Sec. 3. The acts of a majority of said commissioners, heretofore done and performed, or hereafter to be done or performed shall be as valid and effectual, as if done by all of them.

Compensation of the commissioners.

Sec. 4. The said commissioners shall each be allowed the sum of ten dollars per day, for each and every day they shall have been, or shall be necessarily employed in and about the business and work aforesaid, or that required by this act, to be paid out of the fund heretofore provided for that purpose.

Terms of the sale of lots in said town

Duty of the superintendent of public buildings.

Sec. 5. The following shall be the terms of sale of the lots in said town, to wit: One tenth part of the purchase money shall be paid in hand at the time of sale, and the balance in three equal annual instalments, to be secured by notes with approved security, to be given by the purchasers, payable to the superintendent of public buildings of the state, for the time being, and his successors in office; the security to be approved by said superintendent, and the notes to be by him taken, received, kept, and collected; and for that purpose, it shall be the duty of the superintendent of public buildings, to attend the sales of said lots, and to take and keep an account of the sale thereof in writing, to be filed in his office.

To issue to the purchasers a certificate of the sale of each lot.

Sec. 6. On the sale of the lots in said town, it shall be the duty of the superintendent of the public buildings of the state, to issue to the purchasers a certificate of the sale of each lot, similar to the certificate granted by the registers of the land offices of the United States, to the purchasers of public lands, stating the lots sold, the amount of the purchase money, the sum paid, and the sums and time of payment of the amount unpaid, setting forth the sale as made by the state of Mississippi, and that on final payment for each lot, the legal holder of such certificate, shall be entitled to a patent from this state, for the lot so sold; and the said superintendent shall open an account for each purchaser of said lots.

On final payment for each lot, the holder of such certificate entitled to a patent.

Sec. 7. Henry Bone shall be entitled to become the purchaser of three acres of the land aforesaid, at the place where he has established a tan yard, near said town, for the consideration of one hundred dollars, to be paid in manner and mode above provided for the sale of said lots; which three acres shall be laid off as follows, to wit: Beginning at a stake, ninety poles from the south west corner of section number two, and south west quarter of said section, in the form of a square, so as to include the improvements made by said Henry Bone: *Provided*, he shall erect a tan-yard thereon in one year from this date.

Provision in favor of Henry Bone.

Sec. 8. The superintendent of public buildings shall be empowered to grant the right of preference to five additional lots in said town, to wit: Lot number eight court square number two; lot number two in square number nine north; lot number two in square number three north; lot number eight in square number ten south; lot number two in square number two, fractional square north; to such responsible persons as he shall think proper, on the same terms and conditions, to all intents and purposes, as he is authorised by the act of the last session, in relation to ten lots in said town: *Provided*, that the persons to whom the five additional lots may be sold, shall have time until the first Monday in January next to finish the improvements required to be made by them by the above recited acts: *And provided also*, that the auditor, treasurer, and secretary of state, shall each be entitled to one of said lots, if they think proper to apply therefor.

Superintendent may grant right of preference to five additional lots.

Proviso.

Sec. 9. The superintendent of public buildings shall give bond and security, payable to the governor of this state for the time being, in the sum of ten thousand dollars, for the faithful discharge of the duties of his office; which bond shall be filed in the office of the secretary of state, within three months from the passage of this act.

Superintendent to give bond and security.

CHAPTER 121.

An act, to alter and amend an act, entitled "An act, to appoint commissioners to locate the lands given by the United States to this state, for a seat of government," and for other purposes.

Passed January 1, 1823.

Whereas, doubts might hereafter arise relative to the views and intentions of the general assembly, in relation to the town

Preamble.

of Jackson, the seat of government of the state of Mississippi, in approving and establishing the plan of said town, which has been recorded in the several offices, enumerated in the act to which this is an amendment, and particularly to the vacant squares and lots, reserved from public sales—

Land located for seat of government subject to future disposition of general assembly.

Streets, Capital Green, College Green and Court Green, excepted.

Land reserved for ferry.

How located and leased

Provision as to sale of vacant squares.

SEC. 1. *Be it therefore enacted by the senate and house of representatives of the state of Mississippi, in general assembly convened*, That the entire two sections of land, designated by the commissioners appointed to locate the same, except the streets and the lots which may be sold from time to time, shall be, at all times hereafter, subject to any disposition which the general assembly may think proper to make of any and every part thereof: *Provided*, That the lands, designated in the plan of said town, and attached to Capital Green, College Green and Court Green, and not less than two acres, nor more than five, on each side of Pearl River, within the limits of said location, for the seat of government, to be located by the auditor and treasurer of the state, for the use of a ferry, to be leased for the benefit of the said town, under such regulations as may be made, from time to time, by the legislature, or the corporation of said town, shall be reserved exclusively, in perpetuity, for the use and benefit of the said institutions respectively, and benefit of said town; *And provided further*, That the vacant squares designated in the plan of said town, shall not be disposed of except one year's previous notice be given in regular session of the general assembly, before a law can pass authorising a disposition of said squares.

Office of superintendent of buildings abolished.

Auditor and treasurer to perform duties of said office.

Money arising from sale of lots, paid into treasury.

SEC. 2. The office and appointment of a superintendent of buildings be, and the same is hereby abolished; and the auditor of public accounts, and the treasurer of the state, are hereby required and authorised to perform the several duties required of a superintendent of buildings, in the fifth and sixth sections of the act to which this is an amendment; and shall also be conservators of the buildings, and timber belonging to the state, who shall preserve the same from improper waste, and shall institute actions of trespass in their own names, either jointly or severally, for the use of the state, against any person or persons who may, in any manner, abuse or destroy the same, in any court having cognizance thereof; and all moneys arising therefrom, as well as from the sales of lots, shall be paid into the treasury, and be kept and accounted for as other public moneys are.

Duty of auditor and treasurer as to sale of lots.

SEC. 3. The auditor and treasurer, aforesaid, shall cause the sales, advertised by the commissioners, to be effected in the manner intended by them, and shall give receipts and certificates to purchasers in a manner similar to the mode of proceedings pursued by the register and receiver of public monies of the lands of the United States, and fair records of all sales, and receipts of monies, shall be kept in the offices of the audi-

No sale in recess of general assembly.

tor and treasurer respectively; but no sale shall take place in the recess of the general assembly; and the auditor or treasurer of the state shall, prior to the meeting of the next, and of each succeeding general assembly, advertise, in three of the most public newspapers in the state, a number of lots not exceeding one hundred, for public sale, to take place during the sitting of the general assembly.

Rule as to sum payable by occupant for pre-emption lots.

Sec. 4. Where buildings have been erected in the same squares in which the pre-emption or pre-emptions is or are situated, the occupant or occupants of the said pre-emption lots shall only pay so much money as will be equal to an average value of all the vacant or unoccupied lots sold in the square in which such occupant or occupants reside.

Compensation of auditor and treasurer.

Sec. 5. The auditor and treasurer shall be entitled to receive, each, for all the duties required of them under this act, the sum of one hundred dollars, annually, and no more.

Bond and security for purchase money of lots, dispensed with.

Lots to revert in default of payment.

Sec. 6. So much of the before recited act, as requires bond and security for the purchase money of said lots, be, and the same is hereby dispensed with; and in case, when the last instalment for the purchase money becomes due, the whole of the purchase money, with legal interest thereon, if any be due, be not paid, then the purchaser shall forfeit all right, title and interest, in and to said lots so purchased, together with all the money paid; and the same shall revert to, and for the use and benefit of the state.

Ground to be laid out for use of religious and charitable institutions and burying ground.

Sec. 7. The governor, secretary, auditor and treasurer, of the state, or a majority of them, be and they are hereby, appointed commissioners, at any time previous to the next regular session of the general assembly, to lay off such quantities of ground, adjacent to the town, or within the limits of the located grant, as they may deem expedient, for the use of religious and charitable institutions, and burying grounds, and report the same to the next regular session of the general assembly.

CHAPTER 122.

An act, supplementary to an act, entitled "An act, to appoint commissioners to locate the lands given by the United States to this state, for a seat of government."

Passed January 21, 1823.

Auditor to issue warrant on draft of commissioners.

Sec. 1. *Be it enacted by the senate and house of representatives of the state of Mississippi in general assembly convened,* That the auditor of public accounts is hereby authorised and required to issue his warrant on the state treasury, on the draft of said commissioners, or any two of them, for the sum of three hundred and seventy-two dollars ninety and three-fourth cents, being the deficiency of the appropriation of five thousand dollars, for the laying off the town of Jackson, and erecting a temporary state-house therein.

Auditor and treasurer to lay off and lease two lots for brick yards.

SEC. 2. The auditor of public accounts, and the treasurer of the state, be, and they are hereby, authorised to select and lay off, at some suitable places, (without the limits of the town of Jackson,) two several lots of land, of one acre each, and to rent or lease out the same, for the purpose of establishing brick yards, and making bricks, for the use and improvement of said town, to be let out on such conditions, and for such length of time (not exceeding three years) as they the said auditor and treasurer may think proper to adopt; and the money arising from such leases, or rents, shall be appropriated in the same manner as the moneys arising from the rents of the town ferry: *Provided, also*, That the person renting or leasing said lots of land, shall have the right, free of expense, to use any timber on the lands of the state that may have fallen down.

Money arising therefrom, how appropriated.

Right of lessee to use timber.

APPENDIX,

Containing the constitution of the United States, the articles of agreement and cession between the United States and Georgia:—Such acts of congress as have a direct bearing on land titles, within this state; and an Act, to enable the people of the western part of the Mississippi territory, to form a constitution and state government, and for the admission of such state into the union, on an equal footing with the original states: Also, the constitution of Mississippi, together with a summary of such acts of a private nature, passed prior to 1823, as are now in force or have relation to the rights of persons and property.

CHAPTER 1.

Constitution of the United States.

We, the people of the United States, in order to form a more perfect union, establish justice, ensure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the United States of America.

ARTICLE 1.

SECTION 1.

Legislative power vested in congress.

1. All legislative powers herein granted, shall be vested in a congress of the United States, which shall consist of a senate and house of representatives.

SECTION 2.

House of representatives; its members; by whom chosen; qualifications of electors.

1. The house of representatives shall be composed of members chosen every second year by the people of the several states; and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

Qualifications of representatives.

2. No person shall be a representative who shall not have attained to the age of twenty-five years and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Rule of apportioning representatives and direct taxes.

3. Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons. The actual enumeration shall be made within three years after the first

Enumeration every ten years.

Limitation of the ratio of representation.

First apportionment of representatives.

meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the state of *New Hampshire* shall be entitled to choose three; *Massachusetts* eight; *Rhode Island* and *Providence Plantations* one; *Connecticut* five; *New York* six; *New Jersey* four; *Pennsylvania* eight; *Delaware* one; *Maryland* six; *Virginia* ten; *North Carolina* five; *South Carolina* five; and *Georgia* three.

Writs of election for filling vacancies.

4. When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

House of representatives to choose a speaker, &c.

5. The house of representatives shall choose their speaker and other officers, and shall have the sole power of impeachment.

SECTION 3.

Two senators chosen by the legislature of each state for six years; each a vote.

1. The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

Senate divided into three classes.

One third of the seats vacated every two years.

The executive of a state to fill vacancies in the recess of the legislature

2. Immediately after they shall be assembled in consequence of the first election, they shall be divided, as equally as may be, into three classes. The seats of senators of the first class, shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one third may be chosen every second year; and if vacancies happen by resignation or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

Qualifications of senators.

3. No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

President of the senate.

4. The vice president of the United States shall be president of the senate, but shall have no vote, unless they be equally divided.

Senate to choose their officers.

5. The senate shall choose their other officers, and also a president pro tempore, in the absence of the vice president, or when he shall exercise the office of president of the United States.

Trial of impeachments.

6. The senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside; and no person shall be convicted without the concurrence of two thirds of the members present.

Extent of judgment in cases of impeachments

7. Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit, under the United

States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.

Party liable also to judgment according to law.

SECTION 4.

1. The times, places, and the manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but the congress may, at any time, by law, make or alter such regulations, except as to the places of choosing senators.

Elections for senators and representatives how regulated.

2. The congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

Congress to assemble annually.

SECTION 5.

1. Each house shall be the judge of the election, returns, and qualifications, of its own members; and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorised to compel the attendance of absent members, in such manner and under such penalties as each house may provide.

Each house to judge of the election of its own members.

Quorum.

2. Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and with the concurrence of two thirds, expel a member.

Each house may determine its own rules.

3. Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house on any question, shall at the desire of one fifth of those present, be entered on the journal.

Journals.

Yeas and nays.

4. Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

Adjournment of both houses.

SECTION 6.

1. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to or returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

Compensation of senators and representatives.

Privilege from arrest.

2. No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either house during his continuance in office.

Concerning the holding of offices by senators and representatives.

SECTION 7.

Revenue bills.

1. All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments as on other bills.

Power and duty of the president in relation to bills.

Proceedings on bills returned by the president.

2. Every bill which shall have passed the house of representatives and the senate, shall, before it becomes a law, be presented to the president of the United States; if he approve he shall sign it; but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two thirds of that house, it shall become a law. But in all such cases, the votes of both houses, shall be determined by yeas and nays, and the names of the persons voting for and against the bill, shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the congress by their adjournment prevent its return, in which case it shall not be a law.

Joint resolutions, except for adjournment, to receive the same sanction as bills.

3. Every order, resolution, or vote, to which the concurrence of the senate and house of representatives may be necessary, (except on a question of adjournment,) shall be presented to the president of the United States; and before the same shall take effect, shall be approved by him or being disapproved by him, shall be repassed by two thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

SECTION 8.

The congress shall have power—

Congress have power to lay taxes, &c.

1. To lay and collect taxes, duties, imposts, and excises; to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises, shall be uniform throughout the United States:

To borrow money.

2. To borrow money on the credit of the United States:

To regulate commerce.

3. To regulate commerce with foreign nations, and among the several states, and with the Indian tribes:

To establish the rule of naturalization, &c.

4. To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States:

To coin money.

5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures:

To provide for punishing counterfeiters.

6. To provide for the punishment of counterfeiting the securities and current coin of the United States:

To establish post offices.

7. To establish post offices and post roads:

8. To promote the progress of science and useful arts, by se-

curing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries:

To promote science, &c.

9. To constitute tribunals inferior to the supreme court: To define and punish piracies and felonies committed on the high seas, and offences against the law of nations:

To constitute inferior tribunals;

10. To declare war; grant letters of marque and reprisal; and make rules concerning captures on land and water.

To declare war.

11. To raise and support armies. But no appropriation of money to that use, shall be for a longer term than two years:

To raise armies:

12. To provide and maintain a navy:

To provide a navy.

13. To make rules for the government and regulation of the land and naval forces.

To make rules for governing forces.

14. To provide for calling forth the militia to execute the laws of the union, suppress insurrections, and repel invasions.

To provide for calling forth the militia

15. To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States; reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by congress.

To provide for organizing the militia, &c.

16. To exercise exclusive legislation, in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of the government of the United States; and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock yards, and other needful buildings:—and,

To exercise exclusive legislation over a district not exceeding ten miles square.

17. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

To make laws necessary for the execution of their powers.

SECTION 9.

1. The migration or importation of such persons, as any of the states now existing shall think proper to admit, shall not be prohibited by the congress, prior to the year one thousand eight hundred and eight; but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

Importation of certain persons not to be prohibited prior to 1808.

2. The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.

Writ of *habeas corpus.*

3. No bill of attainder or ex post facto law shall be passed.

No bill of attainder or *ex post facto* laws.

4. No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

Direct taxes according to census.

5. No tax or duty shall be laid on articles exported from any state. No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another: nor shall vessels, bound to or from one state, be obliged to enter, clear, or pay duties in another.

No export duty, nor preference of one state to another, in commerce.

Money to be expended by legal appropriations only.

6. No money shall be drawn from the treasury, but in consequence of appropriations made by law: and a regular statement and account of the receipts and expenditures of all public money, shall be published from time to time.

No title of nobility can be conferred by the United States, nor can its officers accept presents, &c.

7. No title of nobility shall be granted by the United States, and no person holding any office of profit or trust under them, shall without the consent of the congress, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state.

SECTION 10.

Powers prohibited to the individual states.

1. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

Powers which the states can exercise only under the sanction of congress.

2. No state shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of Congress. No state shall, without the consent of congress, lay any duty of tonnage, keep troops, or ships of war, in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE 2.

SECTION 1.

Executive power vested in a president.

1. The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and, together with the vice president, chosen for the same term, be elected as follows:

Electors of president and vice president.

2. Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives, to which the state may be entitled in the congress. But no senator or representative, or person holding an office of trust or profit, under the United States, shall be appointed an elector.

Meeting of the electors.

Their proceedings.

3. *The electors shall meet in their respective states, and vote by ballot for two persons, of whom one, at least, shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the*

*certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately choose, by ballot, one of them for president: and if no person have a majority, then, from the five highest on the list the said house shall in like manner choose the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote—a quorum for this purpose shall consist of a member or members from two-thirds of the states: and a majority of all the states shall be necessary to a choice. In every case after the choice of the president, the person having the greatest number of votes of the electors, shall be the vice president. But if there should remain two or more, who have equal votes, the senate shall choose from them, by ballot, the vice president.**

(*Annulled, see amendments, article 12.)

Congress may determine the time of choosing electors.

4. The congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

Qualifications for president.

5. No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this constitution, shall be eligible to the office of president. Neither shall any person be eligible to that office, who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In what cases the duties of president shall devolve on the vice president, &c.

6 In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice president; and the congress may, by law, provide for the case of removal, death, resignation, or inability, both of the president and vice president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed, or a president shall be elected.

Compensation of the president.

7. The president shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished, during the period for which he shall have been elected: and he shall not receive, within that period, any other emolument from the United States, or any of them.

President to take an oath.

8. Before he enter on the execution of his office, he shall take the following oath or affirmation:

Form of the oath.

9. "I DO SOLEMNLY SWEAR (or affirm) THAT I WILL FAITHFULLY EXECUTE THE OFFICE OF PRESIDENT OF THE UNITED STATES, AND WILL, TO THE BEST OF MY ABILITY, PRESERVE, PROTECT, AND DEFEND THE CONSTITUTION OF THE UNITED STATES."

SECTION 2.

Powers of the president.

1. The president shall be commander in chief of the army and navy of the United States, and of the militia of the several states when called into the actual service of the United States, He may require the opinion, in writing, of the principal officer

in each of the executive departments, upon any subject relating to the duties of their respective offices: and he shall have power to grant reprieves and pardons, for offences against the United States, except in cases of impeachment.

Powers which he may exercise with the advice and consent of the senate.

2. He shall have power, by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur: and he shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. But the congress may, by law, vest the appointment of such inferior officers, as they think proper, in the president alone, in the courts of law, or in the heads of departments.

Congress may vest certain appointments in the president alone or otherwise.

3. The president shall have power to fill up all vacancies that may happen, during the recess of the senate, by granting commissions, which shall expire at the end of their next session.

The president may fill vacancies during the recess of the senate.

SECTION 3.

Duties of the president.

1. He shall, from time to time, give to the congress information of the state of the union; and recommend to their consideration such measures as he shall judge necessary and expedient. He may, on extraordinary occasions, convene both houses or either of them: and, in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper. He shall receive ambassadors and other public ministers. He shall take care that the laws be faithfully executed; and shall commission all the officers of the United States.

SECTION 4.

President and other officers removable on impeachment and conviction.

1. The president, vice president, and all civil officers of the United States, shall be removed from office, on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE 3.

SECTION 1.

Judicial power vested in a supreme court, &c.

1. The judicial power of the United States shall be vested in one supreme court, and in such inferior courts, as the congress may, from time to time, ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour; and shall, at stated times receive for their services, a compensation, which shall not be diminished during their continuance in office.

SECTION 2.

1. The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United

States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party, to controversies between two or more states, between a state and citizens of another state, between citizens of different states, between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.*

Extent of judicial power.

(*See a restriction of this provision, amendments, article 11.)

2. In all cases, affecting ambassadors, other public ministers, and consuls, and those in which a state shall be a party, the Supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations, as the congress shall make.

Original and appellate jurisdiction of the supreme court.

3. The trial of all crimes, except in cases of impeachment, shall be by jury, and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places, as the congress may by law have directed.

Trial of crimes, except in cases of impeachment, to be by jury.

SECTION 3.

1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

Treason defined.

Evidence.

2. The congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

Punishment of treason.

ARTICLE 4.

SECTION 1.

Full faith and credit shall be given, in each state, to the public acts, records, and judicial proceedings of every other state. And the congress may, by general laws, prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

Full faith to be given in one state to the public acts, &c. of another.

SECTION 2.

1. The citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states.

Reciprocity of citizenship throughout the states.

2. A person charged in any state with treason, felony or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state, having jurisdiction of the crime.

Criminals flying from one state to another to be delivered up, on demand.

3. No person, held to service or labour in one state under the

Runaway slaves, &c. to be delivered up.

laws thereof, escaping into another, shall in consequence of any law or regulation therein, be discharged from such service or labour; but shall be delivered upon claim of the party to whom such service or labour may be due.

SECTION 3.

Admission of new states into the union.

1. New states may be admitted by the congress into this union; but no new state shall be formed or erected within the jurisdiction of any other state—nor any state be formed by the junction of two or more states or parts of states—without the consent of the legislatures of the states concerned, as well as of the congress.

Power of congress over territory and other property of the United States.

2. The congress shall have power to dispose of, and make all needful rules and regulations respecting the territory or other property belonging to the United States: and nothing in this constitution shall be so construed, as to prejudice any claims of the United States or of any particular state.

SECTION 4.

Guarantee and protection of each state by the United States.

The United States shall guarantee to every state in this union, a republican form of government; and shall protect each of them against invasion, and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

ARTICLE 5.

Mode of amending the constitution.

The congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution, or on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments; which in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the congress: Provided, that no amendment, which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

ARTICLE 6.

Assumption of debts incurred under the confederation.

1. All debts contracted, and engagements entered into, before the adoption of this constitution, shall be as valid against the United States, under this constitution, as under the confederation.

2. This constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land, and the judges, in every

state shall be bound thereby; any thing in the constitutions or laws of any state to the contrary notwithstanding.

This constitution, acts of congress and treaties, to be the supreme law of the land.

3. The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound, by oath or affirmation, to support this constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

Senators, representatives, &c. bound by oath or affirmation to support this constitution.

No religious test.

ARTICLE 7.

The ratification of the conventions of nine states shall be sufficient for the establishment of this constitution between the states so ratifying the same.

Ratification of nine states sufficient, &c.

Done in convention by the unanimous consent of the states present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the Independence of the United States of America, the twelfth. In witness whereof we have hereunto subscribed our names.

GEORGE WASHINGTON,
president and deputy from Virginia.

NEW HAMPSHIRE,
John Langdon,
Nicholas Gilman.
MASSACHUSETTS.
Nathaniel Gorham,
Rufus King.
CONNECTICUT.
William Samuel Johnson,
Roger Sherman.
NEW YORK,
Alexander Hamilton.
NEW JERSEY.
William Livingston,
David Brearley,
William Patterson,
Jonathan Dayton,
PENNSYLVANIA.
Benjamin Franklin,
Thomas Mifflin,
Robert Morris,
George Clymer,
Thomas Fitzsimons,
Jared Ingersoll,
James Wilson,
Governeur Morris.

DELAWARE,
George Reed,
Gunning Bedford, jun.
John Dickinson,
Richard Basset,
Jacob Broom.
MARYLAND.
James M'Henry,
Daniel of St. Tho. Jenifer,
Daniel Carroll.
VIRGINIA.
John Blair,
James Madison, jun.
NORTH-CAROLINA.
William Blount,
Richard Dobbs Spaight,
Hugh Williamson.
SOUTH-CAROLINA.
John Rutledge,
Charles Cotesworth Pinckney,
Charles Pinckney,
Pierce Butler.
GEORGIA.
William Few,
Abraham Baldwin.

Attest, WILLIAM JACKSON, *Secretary.*

AMENDMENTS TO THE CONSTITUTION.

ARTICLE 1.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the peo-

Congress not to interfere with religion, with freedom of speech, of the press and the right of petition.

ple peaceably to assemble, and to petition the government for a redress of grievances.

ARTICLE 2.

Right of the people to keep and bear arms.

A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

ARTICLE 3.

Quartering of soldiers.

No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

ARTICLE 4.

Security against unreasonable searches and seizures.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE 5.

Presentment or indictment, &c. in criminal prosecutions.

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

Right of private property

ARTICLE 6.

Rights of the accused in all criminal prosecutions.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defence.

ARTICLE 7.

Right of trial by jury in suits at common law.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

ARTICLE 8.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Excessive bail and fines and cruel punishments prohibited.

ARTICLE 9.

The enumeration in the constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Rights enumerated not to disparage those retained.

ARTICLE 10.

The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

Powers not delegated &c are reserved to the states or people.

ARTICLE 11.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

Restriction of judicial powers.

ARTICLE 12.

Mode of electing the president and vice president of the United States.

1. The electors shall meet in their respective states, and vote by ballot for president and vice president, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice president; and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice president, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate; the president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted: the person having the greatest number of votes for president, shall be the president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice president shall act as president, as in the case of the death or other constitutional disability of the president.

2. The person having the greatest number of votes as vice president, shall be the vice president, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list, the senate shall choose the vice president: a quorum for the purpose shall consist of two thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice.

3. But no person constitutionally ineligible to the office of president, shall be eligible to that of vice president of the United States.

ARTICLE 13.

Citizenship forfeited by accepting from a foreign power, any title of nobility, office or emolument, &c.

If any citizen of the United States shall accept, claim, receive, or retain any title of nobility or honor, or shall, without the consent of congress, accept and retain any present, pension, office, or emolument of any kind whatever, from any emperor, king, prince, or foreign power, such person shall cease to be a citizen of the United States, and shall be incapable of holding any office of trust or profit under them, or either of them.

CHAPTER 2.

Articles of Agreement and Cession,

Articles of agreement and cession entered into 24th April, 1802.

Entered into on the 14th day of April, one thousand eight hundred and two, between the commissioners appointed on the part of the United States, by virtue of an act entitled, "An act for an amicable settlement of limits with the state of Georgia, and authorising the establishment of a government in the Mississippi territory," and of the act supplemental to the last mentioned act, on one part; and the commissioners appointed on the part of the state of Georgia, by virtue of an act entitled, "An act to carry the twenty-third section of the first article of the constitution into effect," and of the act to amend the last mentioned act, on the other part.

ARTICLE 1.

Georgia cedes territory west of Chatahochee and of a certain line.

The state of Georgia cedes to the United States all the right, title and claim, which the said state has to the jurisdiction and soil of the land situated within the boundaries of the United States, south of the state of Tennessee, and west of a line beginning on the western bank of the Chatahouchee river, where the same crosses the boundary line between the United States and Spain; running thence up the said river Chatahouchee, and along the western bank thereof, to the great bend thereof, next above the place where a certain creek or river called "Uchee," (being the first considerable stream on the western side, above the Cussetas and Coweta towns,) empties into the said Chatahouchee river; thence in a direct line to Nickajack, on the Tennessee river; thence crossing the said last mentioned river, and thence running up the said Tennessee river, and along the western bank thereof, to the southern boundary line of the state of Tennessee; upon the following express conditions, and subject thereto, that is to say:

First. That out of the first net proceeds of the sales of the lands thus ceded, which net proceeds shall be estimated by deducting, from the gross amount of sales, the expenses incurred in surveying, and incident, to the sale, the United States shall pay, at their treasury, one million two hundred and fifty thousand dollars to the state of Georgia, as a consideration for the expenses incurred by the said state, in relation to the said territory; and that for the better securing as prompt a payment of the said sum as is practicable, a land office for the disposition of the vacant lands thus ceded, to which the Indian title has been, or may hereafter be, extinguished, shall be opened within a twelve month after assent of the state of Georgia to this agreement, as hereafter stated, shall have been declared.

One million two hundred and fifty thousand dollars to be paid by the United States out of the first net proceeds of sales of ceded lands.

Secondly. That all persons who, on the twenty-seventh day of October, one thousand seven hundred and ninety-five, were actual settlers within the territory thus ceded, shall be confirmed in all the grants legally and fully executed prior to that day, by the former British government of West Florida, or by the government of Spain, and in the claims which may be derived from any actual survey or settlement made under the act of the state of Georgia, entitled "An act for laying out a district of land situate on the river Mississippi, and within the bounds of this state, into a county, to be called Bourbon," passed the seventh day of February, one thousand seven hundred and eighty-five.

Certain settlers confirmed in their grants and in certain claims.

Thirdly. That all the lands ceded by this agreement to the United States, shall, after satisfying the above mentioned payment of one million two hundred and fifty thousand dollars to the state of Georgia, and the grants recognized by the preceding conditions, be considered as a common fund for the use and benefit of the United States, Georgia included, and shall be faithfully disposed of for that purpose, and for no other use or purpose whatever; provided however, that the United States, for the period and until the end of one year after the assent of Georgia to the boundary established by this agreement shall have been declared, may, in such manner as not to interfere with the above mentioned payment to the state of Georgia, nor with the grants herein before recognized, dispose of, or appropriate a portion of the said lands, not exceeding five millions of acres, or the proceeds of the said five millions of acres, or of any part thereof, for the purpose of satisfying, quieting, or compensating for any claims other than those herein before recognized, which may be made to the said lands or to any part thereof. It being fully understood, that if an act of congress, making such disposition or appropriation, shall not be passed into a law, within the above mentioned period of one year,

Lands thus ceded to be a common fund.

Proviso.

The United States may dispose of or appropriate not exceeding five millions of acres for satisfying certain claims.

But said appropriation to be made within one year or to be null.

the United States shall not be at liberty thereafter, to cede any part of the said lands on account of claims which may be laid to the same, other than those recognized by the preceding condition, nor to compensate for the same; and in case of any such cession or compensation, the present cession of Georgia to the right of soil over the lands thus ceded or compensated for, shall be considered as null and void; and the lands thus ceded or compensated for, shall revert to the state of Georgia.

Indian title to lands in Georgia, to be extinguished by the United States.

Fourthly. That the United States shall, at their own expense, extinguish for the use of Georgia, as early as the same can be peaceably obtained on reasonable terms, the Indian title to the county of Talasee, to the lands left out by the line drawn with the Creeks, in the year one thousand seven hundred and ninety-eight, which had been previously granted by the state of Georgia; both which tracts had formerly been yielded by the Indians; and to the lands within the forks of Oconee and Oakmulgee rivers; for which several objects, the president of the United States has directed that a treaty should be immediately held with the Creeks; and that the United States shall, in the same manner, also extinguish the Indian title to all the other lands within the state of Georgia.

Territory to form a state and to be admitted into the Union.

Fifthly. That the territory thus ceded, shall form a state, and be admitted as such into the union, as soon as it shall contain sixty thousand free inhabitants, or at an earlier period if congress shall think it expedient, on the same conditions and restrictions, with the same privileges, and in the same manner as is provided in the ordinance of congress of the thirteenth day of July, one thousand seven hundred and eighty-seven, for the government of the western territory of the United States; which ordinance shall, in all its parts, extend to the territory contained in the present act of cession, that article only excepted which forbids slavery.

ARTICLE 2.

Cession accepted by the United States. United States cede to Georgia certain lands east of the line above mentioned.

The United States accept the cession above mentioned, and on the conditions therein expressed; and they cede to the state of Georgia, whatever claim, right or title, they may have to the jurisdiction or soil of any lands, lying within the United States, and out of the proper boundaries of any other state, and situated south of the southern boundaries of the states of Tennessee, North Carolina and South Carolina, and east of the boundary line herein above described, as the eastern boundary of the territory ceded by Georgia to the United States.

ARTICLE 3.

Assent of Georgia to be given within six months.

The present act of cession and agreement shall be in force as soon as the legislature of Georgia shall have given its assent to the boundaries of this cession; provided that the said assent shall be given within six months after the date of these presents, and provided that congress shall not, during the same period of six months, repeal so much of any former law as authorises this agreement, and renders it binding and conclusive on the United States: But if either the assent of Georgia shall not be thus given, or if the law of the United States shall be thus repealed within the said period of six months, then and in either case these presents shall become null and void.

Agreement null, in what case.

In faith whereof the respective commissioners have signed these presents, and affixed their seals. Done at the city of Washington, in the district of Columbia, this 24th day of April, 1802.

[SEAL.] JAMES MADISON,
[SEAL.] ALBERT GALLATIN,
[SEAL.] LEVI LINCOLN,
Commissioners on the part of the United States.

[SEAL.] JAMES JACKSON,
[SEAL.] ABRAHAM BALDWIN,
[SEAL.] JOHN MILLEDGE,
Commissioners on the part of the State of Georgia.

WITNESSES,
J. FRANKLIN, *senator of the United States, for North Carolina.*
SAMUEL A. OTIS, *secretary of the senate of the United States.*
JOHN BECKLEY, *Clerk of the house of representatives of the United States.*

CHAPTER 3.

The first twelve and the fourteenth sections of

An act, regulating the grants of land, and providing for the disposal of the lands of the United States south of the state of Tennessee.

Passed March 3, 1803.

SEC. 1. *Be it enacted by the senate and house of representatives of the United States of America in congress assembled*, That any person or persons, and the legal representatives of any person or persons, who were resident in the Mississippi territory on the twenty-seventh day of October, in the year one thousand seven hundred and ninety-five, and who had, prior to that day, obtained, either from the British government of West Florida, or from the Spanish government, any warrant or order of survey for lands lying within the said territory, to which the Indian title had been extinguished, and which were on that day actually inhabited and cultivated by such person or persons, or for his or their use, shall be confirmed in their claims to such lands in the same manner as if their titles had been completed: *Provided, however*, That no such incomplete title shall be confirmed, unless the person in whose name such warrant or order of survey had been granted, was, at the time of its date, either the head of a family, or above the age of twenty-one years.

Persons resident in the Mississippi territory, on 27th of Oct. 1795, who had previously obtained British or Spanish warrants or orders of survey confirmed in their claims.

No title to be confirmed unless the person was the head of a family or above 21 years of age.

SEC. 2. That to every person, or to the legal representative or representatives of every person, who, being either the head of a family, or of twenty-one years of age, did, on that day of the year, seventeen hundred and ninety-seven, when the Mississippi territory was finally evacuated by the Spanish troops,

Tracts of land, not claimed, to be granted to persons inhabiting on the day mentioned, if heads of families, or 21 years of age.

Not more than one tract of 640 acres, to one person.

This donation not to be made to persons claiming by virtue of British or Spanish grants.

actually inhabit and cultivate a tract of land in the said territory, not claimed by virtue either of the preceding section, or of any British grant, or of the articles of agreement and cession between the United States and the state of Georgia, the said tract of land, thus inhabited and cultivated, shall be granted: *Provided, however,* That not more than one tract shall be thus granted to any one person, and the same shall not contain more than six hundred and forty acres: *And provided, also,* That this donation shall not be made to any person who claims any other tract of land in the said territory by virtue of any British or Spanish grant, or order of survey.

Persons being heads of families or above 21, inhabiting and cultivating tracts not claimed, entitled to a preference in purchasing.

No interest on instalments until payable.

Sec. 3. That every person, and the legal representatives of every person, who, being the head of a family, or above the age of twenty-one years, doth, at the time of passing this act, inhabit and cultivate a tract of land in the said territory; not claimed by virtue of the preceding sections of this act, or of any British grant, or of the articles of agreement and cession abovementioned, shall be entitled to a preference in becoming the purchaser, from the United States, of such tract of land, at the price at which the other lands of the United States in the said territory are by this act directed to be sold; and payment may be made therefor in the same manner, and under the same conditions, as directed by this act for such other lands: *Provided, however,* That no interest shall be charged upon any of the instalments until they respectively become payable.

Two land offices to be established in the Mississippi territory.

A register and receiver of public moneys to be appointed for each office.

Register and receiver, &c. to give security; their duties and authority the same as by law provided, &c.

Sec. 4. That, for the disposal of the lands of the United States within the Mississippi territory, two land offices shall be established in the same, one at such place in the county of Adams, as shall be designated by the president of the United States, for the lands lying west of "Pearl River," sometimes called "Half Way River;" and one at such place in the county of Washington, as shall be designated by the president of the United States, for the lands lying east of Pearl River: and, for each of the said offices, a register and receiver of public moneys shall be appointed, who shall give security in the same manner, and whose duties and authority shall, in every respect, be the same in relation to the lands which shall be disposed of at their offices, as are by law provided in relation to the registers and the receivers of public moneys in the several offices established for the disposal of the lands of the United States, north of the river Ohio, and above the mouth of Kentucky river.

Persons claiming lands by virtue of British grants, of the three first sections of this act, or of the articles, &c. be-

Sec. 5. That every person claiming lands by virtue of any British grant, or of the three first sections of this act, or of the articles of agreement and cession between the United States and the state of Georgia, shall, before the last day of March, in the year one thousand eight hundred and four, deliver to the register of the land office, within whose district the land may be, a notice in writing stating the nature and extent of his claims, together with a plot of the tract or tracts claimed; and shall, also, on or before that day, deliver to the said register, for the purpose of being recorded, every grant, order of survey, deed, conveyance, or other written evidence of his claim, and the same shall be recorded by the said register, in books to be kept for that purpose, on receiving from the parties at the rate of twelve and a half cents for every hundred words contained in such written evidence of their claim; and if such person shall neglect to deliver such notice in writing, of his claim, together with a plot as aforesaid, or cause to be recorded such written evidence of the same, all his right, so far as the same is derived from the abovementioned articles of agreement, or from the three first sections of this act, shall become void, and forever thereafter be barred; nor shall any grant, order of survey, deed, conveyance, or other written evidence, which shall not be recorded as above directed, ever after be considered or admitted as evidence in any court in the United States, against any grant derived from the United States.

tween the United States and Georgia, to deliver, before the 31st of March, 1804, to the register, notice of claims, &c.

The register to record grants, orders of survey, &c. delivered by claimants.

Persons neglecting to deliver notice &c. their rights to become void, and barred.

Grants, orders of survey, &c. not recorded, not to be admitted as evidence, against grants derived from the United States.

Sec. 6. That the register of the land office in Adams county, and two other persons, who shall be appointed by the president of the United States alone, shall, for the lands lying west of Pearl river, and the register of the land office of Washington county, together with two other persons, who shall be appointed by the president of the United States alone, shall, for the lands lying east of Pearl river, respectively, be commissioners, for the purpose of ascertaining the rights of persons claiming the benefit of the articles of agreement and cession between the United States and the state of Georgia, or of the three first sections of this act; and the said commissioners shall previous to entering on the duties of their appointment, respectively, take and subscribe the following oath or affirmation, before some person qualified to administer the same: "*I ——, do solemnly swear* (or *affirm*) *that I will impartially exercise and discharge the duties imposed upon me by an act of congress, entitled "An act regulating the grants of land, and providing for the disposal of the lands of the United States south of the state of Tennessee, to the best of my skill and judgment.*" And it shall be the duty of the said commissioners to meet in the county of Adams, and in Washington county, aforesaid, respectively on or before the first day of December next, and they shall not adjourn to any other place, or for a longer time than three days, until the first day of April, one thousand eight hundred and four, and until they shall have completed the business of their appointment. And each board, or a majority of each board, shall, in their respective districts, have power to hear and decide, in a summary manner, all matters respecting such claims, also to administer oaths and examine witnesses, and such other testimony as may be adduced, and to determine thereon according to justice and equity; which determination, so far as relates to any rights derived from the articles of agreement abovementioned, or from the three first sections of this act, shall be final; and, for the safe keeping of the papers and evidence produced, and recording

The register in Adams county, and two other persons, for the lands lying west, and the register of Washington county, with two other persons, for the lands lying east of Pearl river, to be commissioners for ascertaining the rights of claimants.

The commissioners to meet in the county of Adams, and in Washington county, and not to adjourn to any other place nor for a longer time than three days, &c. until they have completed the business of their appointment.

Determination of the board final, how far.

Each board empowered to appoint a clerk, &c.

Books and papers, on the dissolution of the boards, to be lodged in the office of the secretary of state.

When it appears that the claimant is entitled in virtue of a British or Spanish grant, the board to give a certificate.

The certificate, when recorded, to amount to a relinquishment on the part of the United States.

When it appears that the claimant is entitled under the Bourbon act, &c. the commissioners to give a certificate, stating the circumstances.

The certificate, being duly entered, on or before the 1st of Jan. 1805, to entitle the party to a patent.

When the claimant is entitled by virtue of the 3d sec. of this act, the commissioners to give a certificate, and the party entitled to become a purchaser.

Proviso; if he produces a receipt, etc.

their proceedings, the said boards, respectively, shall have power to appoint a clerk, whose duty it shall be to enter in a book to be kept for that purpose, perfect and correct minutes of the proceedings, decisions, meetings, and adjournments, of the boards, together with the evidence on which such decisions are made; which books and papers, on the dissolution of the boards, shall be transmitted to, and lodged in, the office of the secretary of state; and on or before such clerk's entering on the duties of his office, he shall take and subscribe the following oath or affirmation to wit: "*I* ——, *do solemnly swear* (or *affirm*, as the case may be) *that I will, truly and faithfully, enter and record all minutes, proceedings, and decisions, of the board of commissioners for the county of* ——, *appointed under and by virtue of an act of the United States, entitled* "*An act regulating the grants of land, and providing for the disposal of the lands of the United States south of the state of Tennessee,*" *and well and faithfully do and perform all other acts and things in the said act pointed out as the duty of a clerk of the said board;*" which oath shall be entered on the minutes of the board; and when it shall appear to them that the claimant is entitled to a tract of land under the articles of agreement and cession with Georgia aforesaid, in virtue of a British or Spanish grant, legally and fully executed, they shall give a certificate thereof, describing the tract of land and the grant, and stating that the claimant is confirmed in his title thereto by virtue of the said articles; which certificate, being recorded by the register of the land office, whose duty it shall be to record the same, in a book to be kept by him for that purpose, shall amount to a relinquishment forever, on the part of the United States, to any claim whatever to such tract of land: and when it shall appear to the said commissioners that the claimant is entitled to a tract of land by virtue of a settlement under the Bourbon act of Georgia, recognised in the said articles of agreement and cession, or of either of the two first sections of this act, they shall give a certificate thereof, stating the circumstances of the case, and that the claimant is entitled to receive a patent for such a tract of land by virtue of this act; which certificate being duly entered with the register of the land office, on or before the first day of January, eighteen hundred and five, shall entitle the party to a patent for the said tract, which shall issue in like manner as is provided by this act for the other lands of the United States, without the party paying any thing therefor, except the surveying expenses and the fees of office. And when it shall appear to the said commissioners that the claimant is entitled to a right of preemption by virtue of the third section of this act, they shall give a certificate thereof, directed to the register of the land office; which certificate being duly entered with the register of the land office, on or before the first day of January, eighteen hundred and five, shall entitle the party to become a purchaser for such tract of land: *Provided*, That he shall, prior to the first day of January, eighteen hundred and six, also produce a receipt from the treasurer of the United States, or from the receiver of public moneys, for at least one-fourth part of the purchase money, and also for the payment of the surveying expenses; and the party shall, upon payment in full of the purchase money, on which, if any of the three last payments shall be made in advance, he shall be allowed the same discount allowed in similar cases by this act, be entitled to receive a patent, which shall issue in like manner, and on payment of the same fees as are provided by this act, for the other lands of the United States; but if such person shall neglect to enter his certificate, on or before the first day of January, eighteen hundred and five, or to make such first payment as above provided, his right of pre-emption shall cease and become void: *Provided also, and it is further enacted*, That whenever a tract of land to which any person might be entitled by virtue of the three first sections of this act, shall also be claimed by the holder of a British patent, legally and fully executed, and duly recorded in conformity to the provisions of this act, who is not confirmed in his claim by the articles of agreement above mentioned, the commissioners shall, in the certificate granted to the person claiming the land by virtue of this act, state the existence of the adverse claims, in which case the party shall not be entitled to a patent, unless he shall have obtained in his favor a judicial decision in a court having jurisdiction therein: and for every certificate so granted by the boards, respectively, the clerk of the board granting the same shall be entitled to demand and receive, of the party to whom the same is granted, the sum of two dollars.

On payment in full the party entitled to a patent.

If the party neglects to enter his certificate, his right of pre-emption to cease.

The clerk entitled to two dollars for every certificate.

SEC. 7. That the commissioners aforesaid shall, on or before the first day of December, one thousand eight hundred and four, make to the secretary of the treasury a full report of all the British grants legally and fully executed, which have been duly recorded in conformity to the provisions of this act, the title of which is not confirmed to the holders thereof by the articles of agreement abovementioned, stating the present situation of the lands, the date of such grants, the conditions annexed thereto, and how far the same have been fulfilled, together with such other remarks thereon as they may think proper; which report shall be laid before congress at their next session, and the lands contained in such grants shall not be otherwise disposed of until the end of one year after that time.

The commissioners on or before the 1st of Dec. 1804, to make to the secretary of the treasury a full report of all British grants, the title of which is not confirmed by the articles of agreement, etc.

The report to be laid before congress.

SEC. 8. That so much of the five millions of acres reserved for that purpose by the articles of agreement above mentioned, as may be necessary to satisfy the claims not confirmed by that agreement, which are embraced by the two first sections of this act, or which may be derived from British grants for lands which have not been regranted by the Spanish government, be, and the same is hereby, appropriated for that purpose; and so much of the residue of the said five millions of acres, or of the net proceeds thereof, as may be necessary for that purpose, shall be, and is hereby, appropriated for the pursose of satisfying, quieting, and compensating, for such other claims to the lands

So much of the five millions of acres reserved by the articles of agreement, as may be necessary, appropriated for the purpose mentioned.

The residue of the five millions of acres, etc. appropriated for satisfying other claims.

of the United States south of the state of Tennessee, not recognised in the above mentioned articles of agreement, and which are derived from any act or pretended act of the state of Georgia, which congress may hereafter think fit to provide for:

No other claims embraced, etc but those, the evidence of which shall have, on or before the 1st of Jan. 1804, been exhibited to the secretary of state, recorded, etc.

No grant, deed, conveyance, derived from the state of Georgia, to be ever after admitted, unless exhibited and recorded.

Nothing herein to recognise or affect claims, and no certificate to be granted for lands lying east of the Tombigby.

Provided however, That no other claims shall be embraced by this appropriation, but those, the evidence of which shall have, on or before the first day of January next, been exhibited by the claimants to the secretary of state, and recorded in books to be kept in his office for that purpose, at the expense of the party exhibiting the same, who shall pay to the person employed by the secretary of state for recording the same, at the rate of twelve and an half cents for every hundred words contained in each document thus recorded; nor shall any grant, deed, conveyance, or other written evidence, of any claim to the said lands, derived, or pretended to be derived, from the state of Georgia and not recognised by the above mentioned articles of agreement, ever after be admitted or considered as evidence in any of the courts of the United States, unless it shall have been exhibited and recorded in the manner, and within the time, above mentioned: *And provided also*, That nothing herein contained shall be construed to recognise, or affect, the claims of any person or persons to any of the lands above mentioned: *And provided also*, That no certificate shall be granted for lands lying east of the Tombigby river, nor for lands situated without the boundary lines established by treaty between the United States and the Choctaws, made the seventeenth day of October, in the year eighteen hundred and two.

The secretary of state, secretary of the treasury, and attorney general, authorised to receive propositions of compromise, etc. and report thereon to congress.

SEC. 9. That the secretary of state, the secretary of the treasury, and the attorney general, for the time being, be, and are hereby, authorised and empowered to receive such propositions of compromise, and settlement, as may be offered by the several companies, or persons, claiming public lands in the territory of the United States lying south of the state of Tennessee, and west of the state of Georgia; and report their opinion thereon to congress at their next session.

A surveyor of the lands of the United States south of Tennessee, to be appointed, his duties.

SEC. 10. That a surveyor of the lands of the United States south of the state of Tennessee, shall be appointed, whose duty it shall be to engage a sufficient number of skilful surveyors as his deputies, and to cause the lands abovementioned, to which the titles of the Indian tribes have been extinguished, to be surveyed and divided in the manner hereafter directed, and to do and perform all such other acts, in relation to the said lands, as the surveyor general is authorised and directed to do in relation to the lands lying northwest of the river Ohio, and above the mouth of the river Kentucky.

Lands for which certificates are granted, in pursu-

SEC. 11. That the lands for which certificates, of any description whatever, shall have been granted by the commissioners in pursuance of the provisions of this act, shall, as soon as may be, be surveyed under the direction of the surveyor of the lands of the United States abovementioned, in conformity to the true tenor and intent of such certificates; and the said surveyor shall also cause all the other lands of the United States, in the Mississippi territory, to which the Indian title has been extinguished, to be surveyed, as far as practicable, into townships, and subdivided into half sections, in the manner provided for the surveying of the lands of the United States situate northwest of the river Ohio, and above the mouth of the Kentucky river, and shall transmit to the registers of the land offices, respectively, general and particular plots of all the lands surveyed as aforesaid, and shall also forward copies of the said plots to the secretary of the treasury; and he shall, also, with the approbation of the said secretary, fix the compensation of the deputy surveyors, chain carriers, and axe men: *Provided*, That the whole expense of surveying and marking the lines shall not exceed four dollars for every mile that shall be actually run, surveyed, and marked: *And provided*, That the expense of surveying those tracts of land to which the title of the claimants is confirmed by the articles of agreement, or by the two first sections of this act, and those tracts claimed under British grants, a return of which is to be made to congress, shall not be advanced by the United States, but shall be paid to the deputy surveyor by the parties claiming the same; and that, in relation to all the land sold by the United States, the purchaser shall make the same payment for surveying expenses which is directed by law to be made for lands sold north of the river Ohio.

ance of this act, to be surveyed as soon as may be.

The surveyor to cause all the other lands of the United States in the Mississippi territory, to which the Indian title has been extinguished, to be surveyed, and transmit plots.

The whole expense of surveying, not to exceed 4 dolls. for every mile.

The expense of surveying those tracts to which the titles is confirmed, to be paid by the parties claiming.

Expenses of surveying land sold.

SEC. 12 That all the lands aforesaid not otherwise disposed of, or excepted by virtue of the preceding sections of this act, shall, with the exception of the section number sixteen, which shall be reserved in each township for the support of schools within the same, with the exception also of thirty-six sections, to be located in one body, by the secretary of the treasury, for the use of Jefferson college, and also with the exception of such town lots, not exceeding two, in the town of Natchez, and of such an outlot adjoining the same, not exceeding thirty acres, as may be the property of the United States, to be located by the governor of the Mississippi territory, for the use of the said college, be offered for sale to the highest bidder, under the direction of the governor of the Mississippi territory, of the surveyor of the lands of the United States, abovementioned, and of the register of the land office at the places, respectively, where the land offices are kept, and on such day or days as shall, by a public proclamation of the president of the United States, be designated for that purpose. The sales shall remain open at each place for three weeks, and no longer; and all lands, other than the section number sixteen, remaining unsold at the closing of the public sales, may be disposed of at private sale, by the registers of the respective land offices, in the same manner, under the same regulations, for the same price, and on the same terms and conditions, as is provided by law for the sale of the lands of the United States north of the river Ohio, by an act, entitled "An act

All the lands, with the exceptions mentioned, to be offered for sale to the highest bidder, at the places where the land offices are kept.

The sales to remain open, at each place, for three weeks, and lands remaining unsold may be disposed of at private sale.

to amend the act, entitled an act providing for the sale of the lands of the United States in the territory northwest of the Ohio, and above the mouth of Kentucky river:" *Provided always*, That the lands which may be sold at public sale by virtue of this act shall not be sold for less than two dollars per acre; and shall, in every other respect, be sold on the same terms and conditions as was provided for the lands sold at public sale by the last recited act. And patents shall be obtained for all lands granted or sold in the Mississippi territory, in the same manner, and on payment of the same fees, as is provided for lands sold north of the river Ohio, by the said last recited act: *Provided, however*, That evidences of the public debt of the United States shall not be received in payment for the purchase of said lands.

The lands at public sale, not to be sold for less than 2 doll. per acre, etc.

Evidences of the public debt not to be received in payment.

SEC. 14. That the president of the United States shall have full power to appoint and commission the surveyor, registers of the land offices, and receivers of public moneys, abovementioned, in the recess of congress, and their commissions shall continue in force until the end of the session of congress next ensuing such appointment.

The president empowered to appoint the surveyor, registers, and receivers, in the recess, etc.

CHAPTER 4.

The first nine, the eleventh and twelfth sections of

An act, supplementary to the act, entitled " An act, regulating the grants of land, and providing for the disposal of the lands of the United States, south of the state of Tennessee."

Passed March 27, 1804.

SEC. 1, *Be it enacted by the senate and house of representatives of the United States of America in congress assembled*, That persons claiming lands in the Mississippi territory, by virtue of any British or Spanish grant, or by virtue of the three first sections of the act to which this is a supplement, or of the articles of agreement and cession with the state of Georgia, may, after the last day of March, in the year one thousand eight hundred and four, and until the last day of November, then next following, give notice in writing, of their claims, to the register of the land office for the lands lying west of Pearl river, and have the same recorded in the manner prescribed by the fifth section of the act to which this is a supplement; *Provided, however*, That where lands are claimed by virtue of a complete Spanish or British grant, in conformity with the articles of agreement and cession between the United States and the state of Georgia, it shall not be necessary for the claimant to have any other evidence of his claim recorded, except the original grant or patent, together with the warrant or order of survey, and the plot; but all the subsequent conveyances or deeds shall be deposited with the register, to be by him laid before the commissioners, when they shall take the claim into consideration: and the powers vested by law in the commissioners appointed for the purpose

Persons claiming lands in the Mississippi territory, by virtue of any British or Spanish grant, etc. may, until the 30th Nov. 1804, give notice in writing, of their claims, to the register for the lands lying west of Pearl river.

Where lands are claimed by virtue of a complete Spanish or British grant, etc. it will not be necessary to have any other evidence recorded except the original grant, etc.

of ascertaining the claims to lands lying west of Pearl river, shall, in every respect, extend and apply to claims which may be made by virtue of this section, and the same proceedings shall thereupon be had as are prescribed by the act aforesaid, in relation to claims which shall have been exhibited on or before the last day of March, in the year one thousand eight hundred and four.

Sec. 2. The commissioners aforesaid, appointed to adjust the claims to lands lying west of Pearl river, shall have power to adjourn from time to time, and for such time as they may think fit: *Provided, however*, That they shall meet on the first day of December, in the year one thousand eight hundred and four, and shall not afterwards adjourn for a longer time than three days, nor until they shall have completed the business for which they were appointed: *And provided, also*, That nothing contained in this act, nor in that to which this is a supplement, shall be construed to prevent the said commissioners, nor those appointed to adjust the claims to lands lying east of Pearl river, from acting and deciding at any time, on any claim which has been exhibited in the manner prescribed by law, although the evidence of the same may not, at that time, have been transcribed on the books of the register.

The commissioners west of Pearl river may adjourn from time to time.

Nothing in this act to prevent the commissioners from acting and deciding at any time on claims exhibited.

Sec. 3. When any Spanish grant, warrant, or order of survey, shall be produced to either of the said boards of commissioners, for lands which were not, at the date of such grant, warrant, or order of survey, or within one year thereafter, inhabited, cultivated, or occupied by, or for the use of, the grantee; or whenever either of the said boards shall not be satisfied, that such grant, warrant, or order of survey, did issue, at the time when the same bears date, the said commissioners shall not be bound to consider such grant, warrant, or order of survey, as conclusive evidence of the title, but may require such other proof of its validity as they may deem proper: And the said boards shall make a full report to the secretary of the treasury, to be by him laid before congress, for their final decision of all claims grounded on such grants, warrants, or orders of survey, as may have been disallowed by the said boards, on suspicion of their being antedated, or otherwise fraudulent.

When Spanish grant, &c. is produced for lands not inhabited, the commissioners not bound to consider such grant as conclusive.

The boards to make report to secretary of the treasury, to be laid before congress.

Sec. 4. The secretary of the treasury shall be, and he is hereby, authorised to employ an agent, whose compensation shall not exceed one thousand five hundred dollars, in full for all his services, for the purpose of appearing before the said commissioners, in behalf of the United States, to investigate the claims for lands, and to oppose all such as he may deem fraudulent and unfounded. And each of the said boards of commissioners shall have the same powers to compel the attendance of witnesses, as are now vested in the courts of the United States.

An agent may be employed to appear before the commissioners in behalf of the U. States, to investigate claims.

The board west of Pearl river may employ an assistent clerk and translator of Spanish language.

SEC. 5. The board of commissioners, appointed to adjust the claims to lands lying west of Pearl river, shall be authorised to employ an assistant clerk, and also a translator of the Spanish language, to assist them in the despatch of the business which may be brought before them, and for the purpose of recording Spanish grants, deeds, or other evidences of claims, on the register's books; the said translator shall receive for the recording done by him, the fees already provided by law, and may be allowed not exceeding fifty dollars, for every month he shall be employed: *Provided*, That the whole compensation, other than that arising from fees, shall not exceed six hundred dollars: the assistant clerk shall be allowed a sum not exceeding five hundred dollars for his services; and each of the commissioners of the said board, in addition to the compensation now fixed by law, shall be allowed six dollars for every day he shall attend on the board, after the last day of November, in the year one thousand eight hundred and four: *Provided*, That this additional compensation shall not exceed two thousand dollars for each of the said commissioners.

Salary of surveyor general, south of Tennessee.

Land claimed under Spanish grants &c. to be surveyed at expense of the U. States.

SEC. 6. From and after the first day of April, in the year one thousand eight hundred and four, the surveyor of the lands of the United States south of the state of Tennessee, shall receive an annual compensation of two thousand dollars, in lieu of the annual compensation now fixed by law. And the lands claimed by virtue of Spanish grants, legally and fully executed, and the titles to which were confirmed by the articles of agreement and cession between the United States and the state of Georgia, shall be surveyed, in the manner prescribed by the act to which this is a supplement, at the expense of the United States, any thing in the said act to the contrary notwithstanding.

Tract of country annexed to the Mississippi territory.

SEC. 7. The tract of country lying north of the Mississippi territory, and south of the state of Tennessee, and bounded on the east by the state of Georgia, and on the west by Louisiana, shall be, and the same is hereby, annexed to, and made a part of, the Mississippi territory.

Part of the eighth section of act mentioned, repealed.

Proviso.

SEC. 8. So much of the eighth section of an act, entitled "An act regulating grants of land, and providing for the disposal of the lands of the United States, south of the state of Tennessee," as provides, "that no certificate shall be granted for lands lying east of the Tombigbee river," be, and the same hereby is, repealed: *Provided*, That no certificate shall be granted for any lands to which the Indian title has not been extinguished.

Commissioners to make report to secretary of the treasury of claims held by warrants, &c. in

SEC. 9. The commissioners appointed in pursuance of the act aforesaid, be, and they are hereby, authorised and required to make, on or before the first day of December next, a full report to the secretary of the treasury, of all claims that have been, or may be, laid before them for lands held by warrant of survey and improvement, in cases where the claimants were minors, and not heads of families, at the time such warrants were issued, with the circumstances which occasioned the issuing of such warrants; and the validity which has been considered as attached to the same.

cases where claimants were minors, &c.

Sec. 11. The execution of so much of the twelfth section of the act to which this is a supplement, as excepts "such town lots, not exceeding two, in the town of Natchez, and such an outlet adjoining the same, not exceeding thirty acres, as may be the property of the United States, to be located by the governor of the Mississippi territory, for the use of Jefferson college," be, and the same is hereby, suspended until the end of the next session of congress.

The execution of part of the twelfth section of the act referred to, suspended.

Sec. 12. Transcripts of the records of the British province of West Florida, to claims for land therein, and which have been delivered to the government of the United States, may be produced as evidence, and shall be entitled to the same weight, in any court of the United States, as if the same had been delivered, or shall be delivered, to either of the registers of the land offices in the Mississippi territory, before the last of March, one thousand eight hundred and four, any thing in this act, or in the fifth section of the act to which this is a supplement, to the contrary notwithstanding.

Transcripts of records of the British province of West Florida, to claims for lands, entitled to same weight as if delivered within the time mentioned.

CHAPTER 5.

The first and fifth sections of

An act, further to amend an act, entitled "An act, regulating the grants of land, and providing for the disposal of the lands of the United States south of the state of Tennessee."

Passed March 2, 1805.

Sec. 1. *Be it enacted by the senate and house of representatives of the United States of America in congress assembled,* That persons who may have obtained, or shall obtain, certificates from the board of commissioners, appointed to ascertain the claims to lands in the Mississippi territory, shall be allowed three months after the respective date of such certificates, for entering the same with the register of the proper land office; and certificates thus entered, shall have the same force and effect as if they had been duly entered with the said register, on or before the first day of January, one thousand eight hundred and five.

Persons obtaining certificates from the board, allowed three months after date, for entering them with the register.

Sec. 5. Persons claiming lands in the Mississippi territory, by virtue of British grants, legally and fully completed, who may not have filed their claims with the proper register of the land office, in conformity with the provisions heretofore made for that purpose, may, until the first day of December, one thousand eight hundred and five, file such claims with the register of

Persons claiming lands under British grants, allowed further time to file their claims with the register of the land office west of Pearl river. Register to make report to secretary of the treasury.

the land office west of Pearl river, and have the same recorded. And the said register shall, on or before the first day of January, one thousand eight hundred and six, make to the secretary of the treasury a full report of all the British grants thus recorded; which report shall immediately after be laid before congress. The lands contained in such grants shall not be otherwise disposed of until the end of one year after that time.

If persons neglect to file British grants, neither those grants, nor any other evidence to be ever after admitted.

And if any such person shall neglect to file such British grant, and to have the same recorded, in the manner and time hereby provided, neither such grant, nor any other evidence of such claim which shall not have been recorded, as above directed, shall ever after be considered or admitted as evidence in any court of the United States, against any grant derived from the United States, or against any title legally and fully executed, derived from the Spanish government; any act or acts to the contrary notwithstanding.

CHAPTER 6.

The first six sections of

An act, in addition to an act, entitled "An act regulating the grants of land, and providing for the disposal of the lands of the United States, south of the state of Tennessee."

Passed April 21, 1806.

When persons who have received pre-emption certificates, shall, by final judgment rendered in favor of any other person claiming under a British patent, lose the whole, or part of tracts they were entitled to, receiver to return purchase money.

Sec. 1. *Be it enacted by the senate and house of representatives of the United States of America in congress assembled*, That, whenever any person who shall have received a pre-emption certificate from either of the boards of commissioners, appointed for the purpose of ascertaining the rights of persons to lands in the Mississippi territory, shall, by a final judgment or decree of the highest court of law, or equity, in which a decision could be had, within the said territory, rendered in favor of another person claiming by virtue of a British patent, lose the whole or part of the tract of land to which he was entitled by virtue of such certificate, it shall be lawful for the receiver of public moneys for the district where the land lies, to repay to such person or his assigns, so much of the purchase money as had been paid by him, for the land thus recovered by the holder of the British patent.

Where part only of a tract is claimed by holder of a British patent, a patent may issue to owners of certificates for so much as is not claimed.

In all cases where only a part of a tract of land, to which any person may be entitled by virtue of a certificate granted by the commissioners aforesaid, is also claimed by the holder of a British patent, a patent may issue in favor of the owners of such certificate, for so much of such tract of land as is not claimed by virtue of such British patent: *Provided*, That he shall, in every other respect, have complied with the provisions of the acts of congress regulating the grants of land in the Mississippi territory. And the lands contained in British grants, which have been duly recorded in conformity with the provisions of former laws, and for which certificates have not been granted by the commissioners aforesaid, shall not be disposed of until otherwise directed by congress.

Sec. 2. Persons entitled to a right of pre-emption to lands in the Mississippi territory, by virtue of certificates granted by either of the boards of commissioners aforesaid, shall be allowed till the first day of January, one thousand eight hundred and seven, to make the first payment of the purchase money of such lands: And if any such person shall neglect to make such first payment, on or before the first day of January, one thousand eight hundred and seven, his right of pre-emption shall cease and become void.

Persons entitled to right of pre-emption allowed further time to make first payment.

Sec. 3. Each of the commissioners appointed to ascertain the claims to lands in the abovementioned territory, west of Pearl river, shall be allowed at the rate of six dollars for every day he shall attend, subsequent to the first day of April one thousand eight hundred and six: *Provided*, That such additional allowance shall not exceed five hundred dollars for each commissioner: And the agent appointed in behalf of the United States for the said board, shall be allowed an additional compensation, of three hundred and fifty dollars, for the whole of his services. And the register and receiver of public moneys in each of the districts of the abovementioned territory, shall, and they are hereby authorised, in their districts, respectively, and after the dissolution of the board of commissioners for their district, to regulate the location of any tract of land lying within such district, for which a certificate shall have been granted by the commissioners, whenever it shall appear that the location specified in such certificates interfere with each other, or do not include the improvements by virtue of which such certificates were granted: *Provided*, That the said register and receiver shall not be authorised to allow any location on land not improved and settled, in the manner provided by the former acts of congress regulating the grants of land in the abovementioned territory; nor to allow, in any case, a greater quantity of land than had been allowed by the commissioners.

Compensation of commissioners and agent.

The register and receiver in each of the districts of Mississippi, may regulate the location of any tract for which a certificate may have been granted

Sec. 4. Whenever it shall appear to the satisfaction of the register and receiver of the district east of Pearl river, that the settlement and occupancy, by virtue of which a pre-emption certificate had been granted by the commissioners, had been made and taken place prior to the thirteenth day of March, one thousand seven hundred and ninety-eight, they shall be authorised to grant to the party a donation certificate, in lieu of such pre-emption; and the patent shall issue as in other cases of donations: *Provided*, That application shall be made for such an exchange, and evidence produced of the date of such settlement and occupancy, on or before the thirty-first day of December next.

When the settlement and occupancy for which a pre-emption certificate had been granted, had taken place prior to 30th March, 1798, the register and receiver may grant a donation certificate.

Sec. 5. The right of the United States, to all the land lying

The right of the U. States to land described, lying in the city of Natchez, vested in the corporation of that city.

between the front street of the city of Natchez and the Mississippi river, and bounded on the north by north fourth street and the land granted to Stephen Minor, and on the south by the lands annexed to the old fort and those granted to William Barland, be, and the same hereby is, forever vested in the corporation of said city, so as not to affect the legal or equitable claims of any individuals, or of any body politic or corporate, if any such there be: *Provided*, That the said land, as above described, be neither cultivated nor occupied by buildings, but that it be planted with trees, and preserved as a common, for the use, comfort, and health, of the inhabitants of the city aforesaid, and all other persons who may occasionally resort thither.

When section No. 16 falls upon land already granted, the secretary of the treasury to locate another section for the use of schools.

Sec. 6. Whenever the section number sixteen shall fall upon land already granted, by virtue of any act of congress, or claimed by virtue of a British grant, the secretary of the treasury shall locate another section, in lieu thereof, for the use of schools, which location shall be made in the same township, if there be any other vacant section therein, and otherwise, in an adjoining township.

CHAPTER 7.

The eighth section of

An act, confirming claims to land in the district of Vincennes; and for other purposes.

Passed March 3, 1807.

Persons entitled to right of pre-emption to lands, allowed further time to make first payment.

Sec. 8. Persons entitled to a right of pre-emption to lands in the Mississippi territory, shall be allowed till the first day of January next to make the first payment of the purchase money of such lands.

CHAPTER 8.

An act, supplemental to an act, entitled "An act regulating the grants of land, and providing for the disposal of the lands, of the United States south of the state of Tennessee."

Passed January 19, 1808.

Person being head of family or above 21 years, who on 3d of March, 1807, inhabited and cultivated tracts of land not claimed by virtue of a certificate, &c. and have obtained permission to remain there-

Sec. 1. *Be it enacted by the senate and house of representatives of the United States of America in congress assembled*, That every person, and the legal representatives of every person, who, being either the head of a family or above the age of twenty-one years, and who did, on the third day of March, one thousand eight hundred and seven, actually inhabit and cultivate a tract of land not claimed by virtue of a certificate granted by the boards of commissioners east and west of Pearl river, in the Mississippi territory, and who has obtained permission to remain on such tract or tracts of land, agreeably to an act, entitled "An act to prevent settlements being made on lands ceded to the United States, until authorised by law," shall be entitled to a preference in becoming the purchaser from the United States of such tract of land, at the price at which the other lands of the United States in the said territory are directed to be sold; and payment may be made therefor in the same manner, and under the same conditions, as directed by law for such other lands: *Provided*, That such tract of land shall not exceed one section: *And provided also*, That the same shall be surveyed agreeably to the sectional lines already established, or which may hereafter be established, by the surveyor of the lands of the United States south of the state of Tennessee.

on, entitled to preference in becoming purchasers.

Sec. 2. Every person claiming a tract of land by virtue of this act shall, before the first day of October next, deliver to the register of the land office within whose district the land may be, a notice of his claim, in writing, together with a plot of the tract of land claimed; and if any person shall fail to deliver such notice and plot, the person or persons so failing shall forfeit all claim, or pretension of claim, to such tract of land, and the same shall be sold with the other lands of the United States in said territory.

Persons claiming tracts by virtue of this act to deliver notice in writing to the register.

Sec. 3. Persons entitled to a right of pre-emption under the first section of this act, shall be allowed until the first day of January, one thousand eight hundred and nine, to make the first payment of the purchase money of such tract or tracts of land as may be claimed by virtue of said section; and the residue of the said purchase money shall be paid in the same manner, and under the same conditions, as directed for the other lands in said territory.

Persons entitled to right of pre-emption under 1st sec. of this act, allowed till 1st Jan. 1807, to make first payment.

Sec. 4. This act shall not extend to any person or persons claiming other lands in said territory, in his or their own right, by virtue of British or Spanish grants, or to any person or persons to whom a donation has been granted by either of the said boards of commissioners.

This act not to extend to persons claiming other lands in the territory.

CHAPTER 9.

The last seven sections of
An act, concerning the sale of the lands of the United States, and for other purposes.

Passed March 31, 1808.

Sec. 2. That the fourth section of an act, passed the twenty-first day of April, one thousand eight hundred and six, entitled "An act in addition to an act, entitled "An act regulating the grants of land, and providing for the disposal of the lands of the United States south of the state of Tennessee," be revived, and continued in force until the first day of October next: and in any case where a donation shall be granted in lieu of a pre-emption certificate, agreeable to the provisions of the said fourth

The 4th sec. of the act referred to, revived and continued till 15th Oct. 1808.

Where donation is granted in lieu of pre-emption, money to be repaid.

section, the money, if any shall have been paid, shall be, by the receiver of the public money, repaid to the person or persons who have paid the same.

Certain settlers on the river Mobile allowed time to file notice of their claims.

Sec. 3. Certain settlers on the river Mobile, in the Mississippi territory, (east of Pearl river, who reside near the line of demarkation between the United States and Spain, run in pursuance of the treaty of the twenty-seventh day of October, one thousand seven hundred and ninety-five, and whose claims to land has not been decided on according to law) shall be allowed until the first day of October next, to file a notice in writing with the register of the land office, stating the nature and extent of their claims, together with a plot of the tract or tracts claimed; and the said register of the land office, and the receiver of public moneys, are hereby required to hear and determine such claims, according to the several acts of congress "regulating the grants of land, and providing for the disposal of the lands, of the United States south of the state of Tennessee," and to grant certificates in the form heretofore prescribed by the board of commissioners in said district.

The register and receiver to hear and determine claims.

The register to transmit to the secretary of the treasury a report of claims to lands, founded upon British or Spanish warrants, &c. granted prior to the 27th Oct. 1795, not confirmed by former laws.

Sec. 4. It shall be the duty of the registers of the land office east and west of Pearl river, in the Mississippi territory, to transmit to the secretary of the treasury of the United States, on or before the first day of November next, a full and fair report of all the claims of certain persons to lands in the Mississippi territory, founded upon British or Spanish warrants, or orders of survey, granted prior to the twenty-seventh day of October, one thousand seven hundred and ninety-five, not confirmed by former laws regulating the grants of lands in said territory, which have heretofore been regularly filed with the register of the land office aforesaid, together with the evidence in support of such claims, respectively, and to be by him laid before congress at their next ensuing session. And the land contained in such warrants or orders of survey shall not be disposed of until otherwise directed by law.

Lands to which the Indian title was extinguished by treaty with the Choctaws, to what land districts attached.

Sec. 5. That part of the lands to which the Indian title was extinguished by the treaty with the Choctaw nation, made on Mount Dexter, in the year one thousand eight hundred and five, lying on the east of Pearl river, shall be attached to the land district east of Pearl river; and that the residue of the lands to which the Indian title was extinguished by said treaty, shall be attached to the land district west of Pearl river; and the said lands shall, with the exception of section number sixteen, which shall be reserved in each township for the use of schools within the same, and also with the exception of fifteen hundred acres of land, which is hereby confirmed to John M'Grew, in compliance with the fourth article of said treaty, be offered for sale under the same regulations, at the same prices, and on the same terms, as other lands lying within the said district.

SEC. 6. Every person, and the legal representatives of every person, who, being either the head of a family, or above the age of twenty-one years, who did, before the third day of March, one thousand eight hundred and seven, actually inhabit and cultivate a tract of land in the Mississippi territory, belonging to the United States, shall be allowed until the first day of October next, to obtain permission to remain on such tract or tracts of land, according to the provisions of the act, entitled "An act to prevent settlements being made on lands ceded to the United States until authorised by law," and the person or persons obtaining such permission shall be entitled to all the benefits, rights, and privileges, granted by law to those who obtained the same, prior to the first day of January, one thousand eight hundred and eight.

Every person being head of a family or above 21 years, and who before 3d of March, 1807, inhabited and cultivated a tract of land, allowed till 1st Oct. 1808 to obtain permission to remain thereon.

SEC. 7. The right of the United States to two town lots, lying and being in the city of Natchez, be, and the same is hereby, forever vested in the corporation of the said city, so as not to affect the legal or equitable claims of any individuals, or of any body politic or corporate, if any such there be.

Right of the U. States to two lots in Natchez, vested in the corporation of that city.

SEC. 8. Whenever the claims of persons having a right of pre-emption, in either of the districts east or west of Pearl river, shall interfere with each other, the register and receiver of public moneys are hereby authorised, in their respective districts, so to regulate their locations as to prevent such interference.

When persons having right of pre-emption, interfere, the register and receiver to regulate the locations.

CHAPTER 10.

The first three sections of

An act, for the disposal of certain tracts of land in the Mississippi territory, claimed under Spanish grants, reported by the land commissioners as antedated, and to confirm the claims of Abraham Ellis and Daniel Harregal.

Passed February 28, 1809.

SEC. 1. *Be it enacted by the senate and house of representatives of the United States of America in congress assembled*, That the several tracts of land in the Mississippi territory, the titles to which have been derived under Spanish claims, and which have been disallowed by the boards of commissioners east and west of Pearl river, on suspicion of the grants, warrants, or orders of survey, on which the claims are grounded, being antedated, or otherwise fraudulent, and which are embraced in the report of the said boards of commissioners laid before congress, agreeably to the third section of an act, entitled "An act supplementary to the act, entitled an act regulating the grants of land, and providing for the disposal of the lands, of the United States south of the state of Tennessee," shall be, and the same are hereby, directed to be sold, in the same manner, at the same price, and on the same terms and conditions, as have been, or

The several tracts of land, the titles to which have been derived under Spanish claims and disallowed by the boards of commissioners on suspicion of the grants being antedated, to be sold.

Persons claiming, entitled to institute suits for the recovery of the tracts.

Proviso; suits to be instituted within one year.

Persons failing to commence suit, are forever barred.

may be, by law provided for the sale of the other public lands in the said territory; and any person or persons claiming under a Spanish grant, warrant, or order of survey, as aforesaid, shall be entitled to institute, in the highest court of law or equity in the said territory, his or their suit or action for the recovery of the tract or tracts so claimed as aforesaid: *Provided*, such claimant or claimants shall institute his or their suit or action within the term of one year from and after the tract or tracts so claimed shall have been sold by the United States; or, in case the same is now inhabited and cultivated in virtue of a pre-emption right, within one year from and after the passing of this act; and if any person or persons claiming lands as aforesaid, shall fail or neglect to commence or institute his or their suit or action, in the manner and within the time prescribed by this section, or shall be nonsuit, or discontinue the same, his or their right to commence such suit or action, in any court whatsoever, shall be forever barred and foreclosed.

If persons claiming, make it appear that the tract was surveyed prior to 27th Oct 1795, the grant to be held valid.

But if claimant fail to prove that tract was surveyed prior to 27th Oct. 1795, the grant is null.

Sec. 2. If the person or persons claiming under such grant, warrant, or order of survey, shall make it appear, to the satisfaction of the court before whom such suit or action shall be pending, that the tract of land therein specified was actually surveyed prior to the twenty-seventh day of October, one thousand seven hundred and ninety-five, then, and in that case, the same shall be deemed and held to be good and valid, to all intents and purposes, any thing in this act to the contrary notwithstanding: But in case the claimant or claimants shall fail to prove the tract or tracts of land so claimed, to have been actually surveyed prior to the twenty-seventh day of October, one thousand seven hundred and ninety-five, or in case the same shall appear to be otherwise fraudulent or illegal, the grant, warrant, or order of survey, granted by the Spanish government, as aforesaid, by virtue of which such tract or tracts of land may be claimed, shall be, and the same is hereby declared, null and void, to all intents and purposes, and shall not be read in evidence against any claim or certificate of pre-emption derived from the United States.

In the trial, either party may introduce parole evidence.

The judgment to be final, and may be pleaded, in bar.

Sec. 3. It shall be lawful, in the trial of such suit or action, for either party to introduce parole evidence, for the purpose of supporting or invalidating the grant, warrant, or order of survey, as aforesaid: and the judgment, sentence, or decree, of the said highest court of law or equity, in the cases aforesaid, shall be final and conclusive between the parties, and may be plead in bar to any subsequent suit or action brought in the same or any other court, for the recovery of the same land, or any part thereof.

CHAPTER 11.

An act, allowing further time for completing the payments on certain lands, held by right of pre-emption, in the Mississippi territory.

Passed December 12, 1811.

Purchasers of land by right of pre-emption, who have paid their first instalment, allowed time to complete the payments.

SEC. 1. *Be it enacted by the senate and house of representatives of the United States of America in congress assembled*, That all the purchasers of public lands, by right of pre-emption, in the Mississippi territory, who have made payment of their first instalment of the purchase money, be allowed until the first day of January, one thousand eight hundred and thirteen, to complete the payments on their lands, respectively, any law to the contrary notwithstanding.

CHAPTER 12.

An act, confirming claims to lands in the Mississippi territory, founded on warrants of survey granted by the British or Spanish government.

Passed June 30, 1812.

Persons claiming lands under British or Spanish warrant &c. granted prior to 27th Oct. 1795, and on that day actually resident, and whose claims have been filed, confirmed in their rights.

SEC. 1. *Be it enacted by the senate and house of representatives of the United States of America in congress assembled*, That every person, and the legal representative of every person, claiming lands in the Mississippi territory, by virtue of a British or Spanish warrant or order of survey, granted prior to the twenty-seventh day of October, one thousand seven hundred and ninety-five, who were, on that day, actually resident in the said territory, and whose claims have been regularly filed with the proper register of the land office east and west of Pearl river, according to law, and reported to congress, agreeably to the fourth section of the act, entitled "An act concerning the sale of the lands of the United States, and for other purposes," passed on the thirty-first day of March, one thousand eight hundred and eight, be, and they are hereby, confirmed in their rights to land so claimed. And the register and receiver of public moneys for the district within which the lands may lie, are authorised and required to make out, to such claimant or claimants, entitled thereto by the provisions of this act, a certificate of confirmation; for each of which certificates the register and receiver shall, each, receive one dollar; directed to the commissioner of the general land office; and, if it shall appear to the satisfaction of the said commissioner that such certificates have been fairly obtained, according to the true intent and meaning of this act, then and in that case patents shall be granted in like manner as is provided by law for the other lands of the United States: *Provided*, That no person shall be entitled to the benefit of this act who shall not appear, by the report made to congress as aforesaid, or by the records of the boards of commissioners for the said territory, to have been a resident of said territory on the twenty-seventh day of October, one thousand seven hundred and ninety-five; nor shall any person be entitled to the benefit thereof who has

Register and receiver to make to claimants entitled, certificates of confirmation, directed to commissioner of the general land office, and patents to be granted.

No person entitled to benefit of this act, unless resident of the territory on 27th Oct. 1795.

received a donation grant from the United States: *Provided also*, That not more than six hundred and forty acres shall, by virtue of this act, be granted to any one claim.

Not more than 640 acres to any one claim.

Act not to affect decisions of courts respecting claims, or prevent judicial decision between holders of British patent, and the persons whose claims are confirmed.

Sec. 2. Nothing in this act contained shall be construed to affect the decisions of the courts of justice in the said territory, heretofore made, respecting the claims, or any part thereof, embraced by the preceding section, or to prevent a judicial decision between the holder of a British patent, legally and fully executed and recorded with the register of the land office east or west of Pearl river, and the persons whose claims are confirmed by the preceding section, where such claims interfere.

CHAPTER 13.

An act, confirming grants to lands in the Mississippi territory, derived from the British government of West Florida, not subsequently regranted by the government of Spain or of the United States.

Passed July 5, 1812.

Citizens claiming lands by grants from British government of West Florida, whose lands have not been regranted or claimed, and whose claims have been filed and laid before congress, confirmed in their claims.

Nothing in any law to prevent judicial decision.

Sec. 1. *Be it enacted by the senate and house of representatives of the United States of America in congress assembled*, That citizens of the United States claiming lands in the Mississippi territory, by virtue of grants legally and fully executed, derived from the British government of West Florida, whose lands have not been subsequently regranted by the Spanish government, or claimed in right of donation or pre-emption certificates granted by the boards of commissioners east and west of Pearl river, and whose claims have been regularly filed according to law, with the proper register of the land office in the said territory, and are embraced in the report of the commissioners laid before congress, according to law, be, and they are hereby, confirmed in their respective claims, according to the said grants: *Provided*, That nothing in any law of the United States shall be construed to prevent a judicial decision of controversies under the respective claims aforesaid.

CHAPTER 14.

An act, extending relief to certain purchasers of public lands in the Mississippi territory.

Passed April 18, 1814.

Persons having purchased lands from U States and subjected to prosecutions by adverse claimants deriving from a

Sec. 1. *Be it enacted by the senate and house of representatives of the United States of America in congress assembled*, That any person or persons having purchased lands of the United States, in the Mississippi territory, who have been subjected to prosecutions by adverse claimants, who derived their titles from a Spanish grant, warrant, or order of survey, and where such prosecutions have terminated favorably to purchasers from the United States, such purchasers shall have one year, from the first day of June next, for the payment of any interest that may be due from them to the United States, on the purchases aforesaid.

Spanish grant, allowed time for payment of interest.

CHAPTER 15.

The first eight sections of

An act, for ascertaining the titles and claims to lands in that part of Louisiana which lies east of the river Mississippi and island of New Orleans.

Passed April 25, 1812.

Two land districts to be laid off, and Pearl river to form the boundary between them.

A commissioner for each district, to be appointed by the president and senate

The commissioners empowered to appoint clerks, capable of translating, &c.

The commissioners and clerks to take an oath.

SEC. 1. *Be it enacted by the senate and house of representatives of the United States of America in congress assembled,* That for the purpose of ascertaining the titles and claims to lands in that tract of country which lies south of the Mississippi territory, east of the river Mississippi and island of New Orleans, and west of the river Perdido, and a line drawn with the general course thereof to the southern boundary of the said Mississippi territory, the lands within the said limits shall be laid off into two land districts, between which Pearl river shall be the boundary; and for each of which districts a commissioner for land claims shall be appointed by the president of the United States, with the advice and consent of the senate. The said commissioners shall, respectively, have power to appoint a clerk, who shall be a person capable of translating the French and Spanish languages, and who shall in addition to the other duties required of him by this act, perform the duties of translator, when required by the commissioner. And the said commissioners and clerk shall, before entering on the duties of their appointments, respectively, take an oath or affirmation, *truly and faithfully to execute the duties imposed on them by this act.*

The commissioners and clerks to attend in the parishes.

Twenty days notice to be given of the time and place.

SEC. 2. For the more convenient ascertainment of the titles and claims to lands as aforesaid, it shall be the duty of each of the said commissioners, respectively, and their clerks, to attend in each of the several parishes in his district, at such time and place therein as he shall appoint, for the purpose of receiving notices and evidences of titles and claims to lands within the same; and when the commissioners shall have appointed the time and place for his attendance in any parish, he shall cause public notice thereof to be given to the inhabitants of the same, for at least twenty days previous to the time of his commencing the business of his appointment therein.

Each commissioner to keep an office.

SEC. 3. Each commissioner, after he shall have attended for a reasonable and sufficient length of time in each parish of his district, for the claimants of lands within the same to have delivered the notices and evidences of their claims, shall establish his office at such place in his district as he shall judge most convenient, and of which he shall give public notice; and every person claiming lands within his district, who shall have neglected, Six months after the establishment of the offices allowed to deliver notice and evidence of claims.

or by any circumstance have been prevented from delivering a notice and evidence of his claims, during the time the commissioner attended in the parish in which the lands he may claim are situate, shall be at liberty, at any time before the end of six months from and after such office shall have been established, to deliver a notice and the evidence of his claims; and it shall have the same effect as if delivered in the parish wherein the lands claimed are situated.

Persons claiming by virtue of any French, British or Spanish grants, to deliver written notice to the commissioner.

Grants to be delivered to the commissioner for recording.

Where lands are claimed by virtue of complete French, British or Spanish grants, not necessary to have any other evidence entered at large on the record, except the original grant.

Persons neglecting to deliver written notices, their claims never after to be recognised.

SEC. 4. Every person claiming lands in the tract of country aforesaid, by virtue of any grant, order of survey, or other evidence of claim whatsoever, derived from the French, British, or Spanish governments, shall deliver to the commissioner for land claims, when attending for the purpose, in the parish in which the lands claimed may lie, a notice in writing, stating the nature and extent of his claims, together with a plot (in case a survey shall have been made) of the tract or tracts claimed; and shall deliver to the commissioner, when attending as aforesaid, for the purpose of being recorded, every grant, order of survey, deed, conveyance, or other written evidence of his claim; and the same shall be recorded by the clerk, in books to be kept for that purpose, on his receiving from the party or parties at the rate of twelve and an half cents for every hundred words contained in such written evidence of their claim: *Provided, however*, That where lands are claimed by virtue of a complete French, British, or Spanish grant, it shall not be necessary for the claimant to have any other evidence of his claim entered at large on the record, except the original grant or patent, together with the order of survey, and the plot; all the other conveyances or deeds may be abbreviated in the entry; but the chain of title, and the date of every transfer, shall appear on the record. And if such person shall neglect to deliver such notice in writing of his claim, together with the plot (in case the lands claimed shall have been surveyed) as aforesaid, or cause to be recorded such written evidence of the same within the time and times as aforesaid, his claim shall never after be recognised or confirmed by the United States; nor shall any grant, order of survey, deed, conveyance, or other written evidence, which shall not be recorded as above directed, ever after be considered or admitted as evidence in any court of the United States, against any grant which may hereafter be derived from the United States.

The commissioners empowered to inquire into the justice and validity of the claims filed.

SEC. 5. The said commissioners shall have power, in their respective districts, to inquire into the justice and validity of the claims filed with them as aforesaid: It shall be their duty to ascertain, in every case, whether the lands claimed have been inhabited and cultivated; at what time such inhabitation and cultivation commenced; when surveyed, and by whom and what authority; and into every other matter respecting the claims which may affect the justice and validity thereof; and for that purpose shall have power to administer oaths, and to compel the attendance of, and examine, witnesses, and such other testimony as may be adduced; to have access to all records of a public nature, relative to the granting, sale, transfer, or titles, of lands within their respective districts, and to take transcripts from such record or records, or any part thereof; and the evidence thus adduced and obtained, shall, by the clerk, be entered in a book to be kept for that purpose.

The evidence adduced, to be entered by the clerk.

Sec. 6. The powers vested by law in the surveyor of the lands of the United States south of the state of Tennessee, shall extend over all the public lands in the said tract of country.

The powers of the surveyor south of Tennessee, to extend over all the public lands in the tract mentioned.

Sec. 7. The said commissioners shall, respectively, under such instructions as the secretary of the treasury may, with the approbation of the president of the United States, transmit to them in relation thereto, prepare, and cause to be prepared, abstracts from the records of the claims filed as aforesaid, in which the claims shall be arranged into classes, according to their respective merits, and other circumstances whereby they may be diversified; the abstracts shall contain the substance of the evidence adduced in support of, or obtained respecting the claims, and shall contain such other information and remarks as may be necessary to a proper decision thereon; which abstracts the commissioners shall, respectively, as soon as may be, report to the secretary of the treasury, and shall, by him, be laid before congress, at the next session thereafter, for their determination thereon.

The commissioners, &c. to prepare &c. abstracts from the records of claims filed, &c. report them to the secretary of the treasury, who is to lay them before congress.

Sec. 8. The said commissioners be, and they are hereby, authorised and required to collect and report to congress, at their next session, a list of all the actual settlers on land in said districts, respectively, who have no claims to land derived either from the French, British, or Spanish governments, and the time at which such settlements were made.

The commissioners required to collect, and report to congress, a list of actual settlers, who have no claims derived from the British, French, or Spanish governments.

CHAPTER 16.

An act, supplemental to an act, entitled "An act for ascertaining the titles and claims to lands in that part of Louisiana which lies east of the river Mississippi and island of New Orleans."

Passed April 18, 1814.

Sec. 1. *Be it enacted by the senate and house of representatives of the United States of America in congress assembled,* That the time for delivering notices, and the evidences of claims, to lands, as required by the act to which this is a supplement, be, and the same hereby is, extended until the first day of September next.

The time for delivering notices of claims, extended to the 1st Sept. 1814.

Sec. 2. It shall be the duty of the commissioners appointed under the act aforesaid, to receive such evidences as to them may be offered in support of any claims which may not be em-

The commissioners appointed under the act referred to, are to receive evidences offered, and report them to the commissioner of the general land office.

braced by said act, and to report the same, together with those referred to in the first section of this act, on or before the first day of November next, to the commissioner of the general land office, to be by him laid before congress, at their next session.

The commissioner for the district east of Pearl river, required to receive and make report on all claims to lands east of the Tombigbee.

SEC. 3. The commissioner for the district east of Pearl river and west of the Perdido be, and he is hereby, authorised and required to receive and make report, as aforesaid, on all claims to lands lying east of the river Tombigbee.

CHAPTER 17.

An act, for the relief of certain purchasers of public lands in the Mississippi territory.

Passed April 24, 1816.

Further time allowed to certain purchasers of land.

SEC. 1. *Be it enacted by the senate and house of representatives of the United States of America in congress assembled*, That every person who, since the first day of April, one thousand eight [hundred] and eleven, and prior to the eighteenth day of June, one thousand eight hundred and twelve, had purchased any tract or tracts of public land in the Mississippi territory, not exceeding in the whole six hundred and forty acres, unless the tract purchased be a fractional section or sections, or fractional sections classed with an entire section, and whose lands have not already been actually sold or reverted to the United States for non-payment of part of the purchase money, shall be allowed the further time of two years and eight months from and after the expiration of the present period already given by law for completing the payment of the said purchase money; which further term of two years and eight months shall be allowed only on the condition, that all arrears of interest on the purchase money shall have been paid on or before the time shall have expired for completing the payment of the purchase money:

Proviso.

Provided, That in all cases in which the time for completing the payment of the purchase money may have expired, or shall expire, before the first day of July next, the interest may be paid on or before that day. But in case of failure in paying either the arrears, or the residue of principal with the accruing interest, as is herein provided, the tract of land shall forthwith be advertised and offered for sale, in the same manner, and on the same terms, as is directed by law in case of lands not paid for within the limited term, and shall revert in like manner, if the sum due, with interest, be not at such sale bidden and paid. And in cases where any tract or tracts of land in said territory, not exceeding in the whole, six hundred and forty acres, unless the tract be a fractional section or sections, or fractional sections classed with an entire section have, since the first day of October last, reverted to the United States, for default of payment, the original purchaser may again enter the same tract or tracts at the price at which such tract or tracts were originally sold; and all moneys which such original purchaser may have paid shall be replaced to his credit by the receiver of public moneys for the district in which the land may lie, and such re-purchasers shall be allowed the same benefits of the extension of the time of payment created by this act, as though no such reversion had occurred: *Provided*, That such original purchaser shall make to the proper officer such application for such re-entry as is required by law for the entry of lands on or before the first day of July next, and that the land so reverted shall not have then been previously re-sold.

CHAPTER 18.

An act, for adjusting the claims to land, and establishing land offices, in the districts east of the island of New Orleans.

Passed March 3, 1819.

Claims founded on Spanish grants, favorably reported to the secretary of the treasury by the commissioners from the districts east and west of Pearl river, confirmed, &c.

And on British grants.

SEC. 1. *Be it enacted by the senate and house of representatives of the United States of America in congress assembled*, That all the claims to land, founded on complete grants from the Spanish government, reported to the secretary of the treasury, by the commissioners from the districts east and west of Pearl river, appointed under the authority of an act entitled "An act for ascertaining the titles and claims to lands in that part of Louisiana which lies east of the river Mississippi and island of New Orleans," which are contained in the several reports of the commissioners, and which are, in the opinion of the commissioners, valid, agreeably to the laws, usages, and customs, of the said government, be, and the same are hereby, recognised as valid and complete titles against any claim on the part of the United States, or right derived from the United States: And that all claims founded on British grants, contained in the said reports, which have been sold and conveyed, according to the provisions of the treaty of peace, between Great Britain and Spain, of the third of September, one thousand seven hundred and eighty-three, by which that part of Louisiana, lying east of the island of Orleans, was ceded to Spain, under the denomination of West Florida, or which were settled and cultivated by the person having the legal title therein, at the date of said treaty, are recognised as valid and complete titles, against any claim on the part of the United States, or right derived from the United States.

Claims under Spanish orders of survey, requette, prior to 20th Dec. 1803, reported favorably, confirmed.

SEC. 2. All claims, reported as aforesaid, and contained in the several reports of the said commissioners, founded on any order of survey, requette, permission to settle, or any written evidence of claim, derived from the Spanish authorities, which ought, in the opinion of the commissioners, to be confirmed, and which, by the said reports, appear to be derived from the Spanish government, before the twentieth day of December, one thousand eight hundred and three, and the land claimed to have been cultivated and inhabited, on or before that day, shall be confirmed in the same manner as if the title had

Where plot and certificate of survey have not been filed, the claim not to be confirmed for more than 1,280 acres to one person.

Grants as donations, for other claims.

Not more than 1,280 acres to one person.

Confirmation of incomplete titles only a relinquishment forever.

No confirmation to persons recognised under preceding provisions.

been completed: *Provided*, That in all such claims, where the plot and certificate of survey, made prior to the fifteenth day of April, one thousand eight hundred and thirteen, under the authority of the Spanish government, in pursuance of such claim, has not been filed with the said commissioners, such claim shall not be confirmed to any one person for more than twelve hundred and eighty acres; and that for all the other claims to land comprised in the reports aforesaid, and which ought, in the opinion of the commissioners, to be confirmed, the claimant to such lands shall be entitled to a grant therefor as a donation: *Provided*, That such grant, as a donation, shall not be made to any one person for more than twelve hundred and eighty acres; which confirmation of the said incomplete titles and grants of donations hereby provided to be made, shall amount only to a relinquishment forever, on the part of the United States, of any claim whatever to the tract of land so confirmed or granted: *And provided also*, That no such claim shall be confirmed to any person to whom the title to any tract of land shall have been recognised under the preceding provisions.

Grants, as donations, in the case of claims in right of settlers, on or before 15th April, 1813, if comprised in the lists.

Not more than 640 acres to one person.

No grant for lands recognised by preceding sections.

Sec. 3. Every person, or his or her legal representative, whose claim is comprised in the lists, or register of claims, reported by the said commissioners, and the persons embraced in the list of actual settlers, or their legal representatives, not having any written evidence of claim reported as aforesaid, shall, where it appears, by the said reports, or by the said lists, that the land claimed or settled on had been actually inhabited or cultivated, by such person or persons in whose right he claims, on or before the fifteenth day of April, one thousand eight hundred and thirteen, be entitled to a grant for the land so claimed, or settled on, as a donation: *Provided*, That not more than one tract shall be thus granted to any one person, and the same shall not contain more than six hundred and forty acres; and that no lands shall be thus granted which are claimed or recognised by the preceding sections of this act.

Pre-emption rights to inhabitants and cultivators on the 12th April, 1814, in the case of lands not claimed by preceding sections.

First instalment within two years after opening the land office.

Sec. 4. Every person comprised in the said list of actual settlers, not having any written evidence of claim to land in said districts, and who, on the twelfth day of April, one thousand eight hundred and fourteen, shall have inhabited or cultivated a tract of land in either of the said districts, not claimed by virtue of either of the preceding sections of this act, shall be entitled to a preference, on becoming a purchaser, from the United States, of such tract of land, on the same terms and conditions, and at the same price, for which the other public lands are sold at private sale: *Provided*, That the first instalment of the purchase money shall be paid to the receiver of public moneys of the district within which the land lies, within two years after the opening of the land office for such district.

A land office at St Helena

Sec. 5. For the purpose of adjusting the titles and claims to lands in the districts aforesaid, and for the disposal of the lands which may remain the property of the United States therein, a land office shall be established in each of the said districts, to be kept, for the western district, at St. Helena court-house, and, for the eastern district, at Jackson court-house; and a register and receiver of public moneys shall be appointed for each of the said land offices, who shall give security in the same manner, and in the same sums, and whose compensation, duties, and authority, shall, in every respect, be the same, in relation to the lands which shall hereafter be disposed of, at their respective offices, as are by law provided in relation to the other registers and receivers of public moneys for the several land offices of the United States.

court-house, and at Jackson court-house.

A register and receiver of public moneys for each.

Sec. 6. Every person or persons, claiming lands in either of the said districts, whose claims have not heretofore been filed with the commissioners of the land office, of the district wherein the lands lie, shall be allowed until the first day of July, one thousand eight hundred and twenty, to deliver notices in writing, and the evidences of claims: in the said districts, respectively, to the register of the land office at Jackson court-house and at St. Helena court-house; and the notices and evidences so delivered, within the time limited by this act, shall be recorded in the same manner, and on the payment of the same fees, as if the same had been delivered before the commissioners closed their said registers.

Claimants allowed till 1st July, 1820, to deliver notices, evidences, &c. to the registers of Jackson and St. Helena court-houses.

Notices delivered in time, to be recorded.

Sec. 7. Every person or persons, who had filed his or their notice of claims to land, within either of the said districts, with the commissioner of the land office, according to the former laws, but have not exhibited sufficient testimony in support of the same, and whose claim has not been recommended for confirmation, shall be allowed until the first day of July, one thousand eight hundred and twenty, to deliver written evidence, or other testimony, in support of his or their claim, the notice of which had been filed as aforesaid, to the register of the land office at St. Helena, for lands lying in the district west of Pearl river, and to the register of the land office at Jackson court-house, for the lands lying in the district east of Pearl river; and the evidence of claims, the notice whereof had been filed, as aforesaid, for lands lying in the said district, delivered, within the time limited by this section, to the said registers, shall be recorded by them, respectively, in the same manner as was directed by former acts, on receiving the same fees allowed by said acts, for recording evidence of claims to land in the same districts.

Persons who had filed notices with the commissioner of the land office, whose claims have not been recommended, allowed till 1st July, 1820, to deliver written evidence and other testimony.

Evidence delivered in time to be recorded.

Sec. 8. The register and receiver of public moneys of the said respective land offices, at Jackson court-house and at St. Helena court-house, shall have the same powers, and perform the same duties, in every respect, in relation to the claims that may be filed in virtue of the sixth section of this act, and in relation to the claims, the notices of which had been filed under

The registers and receivers at Jackson and St. Helena court-houses to have the same powers, perform the same duties, as the commissioners for the districts east and west of Pearl river, would have had, &c.

former acts, as well as to the additional evidence which shall be adduced in support thereof, agreeably to the seventh section of this act, as the commissioners for the districts east and west of Pearl river would have had, or should have performed, if such notices had been filed, and such evidence adduced, before the said commissioners closed their registers.

The register of each of the land offices to report to the commissioner of the general land office.

The commissioner to lay the report, before congress.

SEC. 9. It shall be the duty of the register of each of the said land offices, respectively, to make, to the commissioner of the general land office, a report of all the claims filed with the register aforesaid, with the substance of the evidence in support thereof; and of the claims formerly filed, in support of which additional evidence shall have been received, with the substance of such evidence; and also their opinion, and such remarks respecting the claim as they may think proper to make; which report, together with a list of the claims, which, in the opinion of the register and receiver, ought to be confirmed, and also a list of actual settlers, prior to the passage of this act, noting the time of their respective settlements, shall be laid, by the commissioner of the general land office, before congress, at their next session, for their determination thereon.

Registers and receivers may appoint clerks.

1,500 dollars a year to each register and receiver.

1,000 dolls. per ann. to each clerk.

Not more than 18 months' compensation.

SEC. 10. The said registers and receivers shall, respectively, have power to appoint a clerk, who shall be a person capable of translating the French and Spanish languages, and who shall perform the duty of translator, when required by said registers and receivers; and each of the said registers and receivers shall be allowed, as a compensation for their services in relation to the said claims, at the rate of fifteen hundred dollars a year; and each of the clerks at the rate of one thousand dollars a year: *Provided*, That not more than eighteen months' compensation be thus allowed to the register, receiver, and clerk, for the district east of Pearl river; nor more than eighteen months' compensation be allowed to the register, receiver, and clerk, of the district west of Pearl river.

Surveyor of the lands south of Tennessee to appoint a principal deputy, with a salary of 500 dollars and fees.

Amount of fees.

Duty of the deputy surveyor.

SEC. 11. The surveyor for the lands south of the state of Tennessee shall, with the consent and approbation of the president of the United States, appoint a principal deputy surveyor for the lands within the said districts, who shall receive an annual salary of five hundred dollars, and, in addition thereto, the following fees; that is to say: for examining and recording the surveys executed by any of the deputies, at the rate of twenty-five cents for every mile of the boundary line of such survey; and for a certified copy of any plot of a survey in the office, twenty-five cents; and whose duty it shall be to survey, or cause to be surveyed, by his other deputies, the lands, the claims to which are confirmed, and that are directed to be granted as donations, where the same have not been already surveyed, and the lands which may be claimed by right of pre-emption, whenever directed by the register and receiver, and to execute such other surveys as may be necessary for the ascertainment of the lands, the title or claim to which is embraced in the report of the commissioners aforesaid. And the said principal deputy surveyor shall make out particular plots of the surveys directed by this act, which he shall return to the register of the proper district; and also, a general and connected plot, which he shall return to the surveyor of the lands south of the state of Tennessee; and the expense of surveying shall be paid by the United States: *Provided*, The same shall not exceed, in the whole, four dollars a mile, for every mile which shall be actually surveyed and marked.

Expense of surveying, paid by the U. States.

Not to exceed 4 dolls. a mile.

SEC. 12. The books of the former commissioners, in which the claims, and evidence of claims, are recorded, shall be lodged with the registers of the land office, for the respective districts; and the register and receiver of public moneys, in each respective district, shall have power to examine the claims recognised, confirmed, or provided to be granted, by the provisions of this act, as also, claims to the right of pre-emption; and they shall make out to each claimant, entitled, in their opinion, thereto, a certificate, according to the nature of the case, under such instructions as they may receive from the commissioner of the general land office; and on presentation at the general land office of such certificate for a confirmed claim, or for a donation, according to the provisions of this act; and where it shall appear, to the satisfaction of the commissioner of the general land office, that the certificate has been fairly obtained, according to the true intent and meaning of this act, then, and in that case, a patent shall be granted, in like manner as for other lands of the United States.

Books of former commissioners to be lodged with the registers.

Register and receiver empowered to examine claims.

A certificate to each claimant entitled, &c.

The certificate having been fairly obtained, a patent to issue.

SEC. 13. The president shall have power to appoint the register and receiver of public moneys for the said districts in the recess of the senate, who shall be nominated to them at their next meeting.

The president may appoint the registers and receivers in the recess, &c.

CHAPTER 19.

An act, supplementary to the several acts for adjusting the claims to land, and establishing land offices, in the districts east of the Island of New-Orleans.

Passed May 8, 1822.

SEC. 1. *Be it enacted by the senate and house of representatives of the United States of America in congress assembled*, That all the claims to land said to be derived from the British or Spanish authorities, reported to the commissioner of the general land office by the registers and receivers of the land offices at St. Helena court house and at Jackson court house, in the districts east and west of Pearl river, appointed under the authority of an act, entitled "An act for adjusting the claims to land, and establishing land offices, in the districts east of the island of New-Orleans," which are contained in the several reports of the

Claims to land derived from British or Spanish authorities, reported to the commissioner of the general land office by the registers and receivers at St. Helena and

Jackson court-houses, which, in their opinion, are valid, recognised as complete titles.

registers and receivers, and which are, in the opinion of the registers and receivers, valid, agreeably to the laws, usages, and customs, of the said governments, be and the same are hereby, recognised as valid and complete titles, against any claims on the part of the United States, or right derived from the United States.

All claims reported, founded on orders of survey, requettes, derived from the Spanish authorities, confirmed.

The confirmation of claims provided for to amount only to a relinquishment on the part of the U. States.

SEC. 2. All the claims reported as aforesaid, and contained in the several reports of the said registers and receivers, founded on orders of survey, requettes, permission to settle, or other written evidences of claims, derived from the Spanish authorities, which ought, in the opinion of the registers and receivers, to be confirmed, shall be confirmed in the same manner as if the title had been completed: *Provided*, That the confirmation of all the said claims provided for by this act, shall amount only to a relinquishment for ever, on the part of the United States, of any claim whatever to the tract of land so confirmed or granted.

Every person, whose claim is comprised in the lists, reported by the registers and receivers, and persons embraced in the list of actual settlers, if actually inhabiting, on or before 15th April, 1813, entitled to a grant.

Not more than 640 acres to one person; and no lands to be thus granted which are claimed by preceding sections.

No claim confirmed where the quantity was not ascertained, and report made, prior to 25th July, 1820.

SEC. 3. Every person, or his or her legal representative, whose claim is comprised in the lists or registers of claims reported by the registers and receivers, and the persons embraced in the lists of actual settlers, or their legal representatives, not having any written evidence of claim reported as aforesaid, shall, when it appears by the said reports, or by the said lists, that the land claimed or settled on had been actually inhabited or cultivated by such person or persons in whose right he claims, on or before the fifteenth day of April, one thousand eight hundred and thirteen, be entitled to a grant for the land so claimed or settled on as a donation: *Provided*, That not more than one tract shall be thus granted to any one person, and the same shall not contain more than six hundred and forty acres; and that no lands shall be thus granted which are claimed or recognised by the preceding sections of this act, or by virtue of a confirmation under an act, entitled "An act for adjusting the claims to land, and establishing land offices, in the districts east of the island of New-Orleans," approved on the third day of March, eighteen hundred and nineteen: *And provided also*, That no claim shall be confirmed where the quantity was not ascertained, and report made thereon by the registers and receivers, prior to the twenty-fifth day of July, one thousand eight hundred and twenty.

Registers and receivers, except in relation to perfect titles, as recognised, empowered to direct the manner in which

SEC. 4. The registers and receivers of the public moneys of the said respective districts, except in relation to perfect titles, as recognised in the first section of this act, and the first section of the act of the third day of March, one thousand eight hundred and nineteen, shall have power to direct the manner in which all lands claimed in virtue of the preceding sections shall be located and surveyed; and also to direct the location and manner of surveying all the claims to land recognised by the second, third, and fourth, sections of an act, entitled "An act for adjusting the claims to land, and establishing land offices, in the districts east of the island of New-Orleans," approved on the third day of March, one thousand eight hundred and nineteen, having regard to the laws, usages, and customs, of the Spanish government on that subject; and having regard also to the mode adopted by the government of the United States in surveying the claims to land confirmed by virtue of the second and third sections of an act of congress, entitled "An act regulating the grants of lands, and providing for the disposal of the lands, of the United States, south of the state of Tennessee," approved on the third of March, one thousand eight hundred and three. And that in relation to all such claims which may conflict, or in any manner interfere, the said registers and receivers of public moneys of the respective districts shall have power to decide between the parties, and shall, in their decision, be governed by such conditional lines or boundaries as may have been agreed on between the parties, either verbally or in writing, at any time prior to the passage of this act. But, upon the decision of those claims alluded to; which may conflict or interfere, and in relation to which the parties interested have agreed on no conditional lines or boundaries as to the manner of locating the same, the said registers and receivers of the respective districts shall make an equal division of the land claimed, so as to allow each party his or their improvements: *Provided however*, That, should it be made appear, to the satisfaction of the register and receiver of public moneys of the respective districts, in any such case, that the subsequent settler had obtruded on the claim of the former, and had made his establishment after having been forbid so to do, the said registers and receivers of public moneys shall have power to decide between the parties, according to the circumstances of the case and the principles of justice.

the lands shall be located and surveyed, having regard, etc.

The registers and receivers may decide on conflicting claims.

Where the subsequent settler has obtruded on the claim of the former, the registers and receivers may decide according to the circumstances of the case and the principles of justice.

Sec. 5. Patents shall be granted for all lands confirmed by virtue of the provisions of this act, in the same manner as patents are granted for lands confirmed under former acts, to which this is a supplement.

Patents for lands under this act to be granted as for lands confirmed under former acts.

Sec. 6. To every person who shall appear to be entitled to a tract of land, under the second and third sections of this act, a certificate shall be granted, by the register and receiver of the district in which the land lies, setting forth the nature of the claim and the quantity allowed; for which certificate the party in whose favor it issues shall pay one dollar, to be divided between the said receiver and register.

Persons entitled to tracts under the 2nd and 3d sections of this act, to be furnished with certificates by the register and receiver, etc.

Sec. 7. The president of the United States be, and he is hereby, authorised to remove the land office from St. Helena court house to such other place, within the said district, as he may deem suitable and convenient.

The president authorised to remove the land office from St. Helena court-house.

CHAPTER 20.

An act, authorising the secretary of the treasury to locate the lands reserved for the use of Jefferson college, in the Mississippi territory.

Passed February 20, 1812.

The secretary of the treasury empowered to locate in one body, the 36 sections of land reserved for use of Jefferson college.

Sec. 1. *Be it enacted by the senate and house of representatives of the United States of America in congress assembled,* That the secretary of the treasury be, and he is hereby, authorised and empowered to locate, in one body, the thirty-six sections of land reserved for the use of Jefferson college, in the Mississippi territory, by an act, entitled "An act regulating the grants of land, and providing for the sale of the lands of the United States south of the state of Tennessee," passed on the third day of March, one thousand eight hundred and three, on any lands within the said territory, not sold, or otherwise disposed of, and to which the Indian title has been extinguished.

CHAPTER 21.

An act, providing for a grant of land for the seat of government in the state of Mississippi, and for the support of a seminary of learning within the said state.

Passed February 20, 1819.

Two sections of land for a seat of government.

To be located in one entire tract.

Sec. 1. *Be it enacted by the senate and house of representatives of the United States of America in congress assembled,* That there shall be granted to the state of Mississippi, two entire sections of land, or fractional sections, or quarter sections, not exceeding the quantity contained in two entire sections, for a seat of government in the said state; which land shall be located in one entire tract, at such place as, under the authority of the said state, shall be designated for the seat of government therein, whenever the Indian title shall have been extinguished thereto, and before the commencement of the public sales of the adjoining and surrounding lands belonging to the United States.

Another township for the support of a seminary of learning.

To be located by the secretary of the treasury, whenever, etc.

This grant in lieu of a township reserved by the act of 3d March, 1815.

Sec. 2. In addition to the township of land granted for the support of Jefferson college, there shall be granted, in the said state, another township, or a quantity of land equal thereto, to be located in tracts of not less than four entire sections each which shall be vested in the legislature of the said state, in trust, for the support of a seminary of learning therein; which lands shall be located by the secretary of the treasury of the United States, whenever an extinguishment of Indian title shall be made for lands, suitable, in his opinion, for that purpose, in the said state: which grant, hereby provided to be made, shall be considered as made in lieu of a township directed to be reserved by the fifth section of an act, entitled "An act to provide for the ascertaining and surveying of the boundary lines fixed by the treaty with the Creek Indians, and for other purposes," passed

March three, one thousand eight hundred and fifteen; and which reserve of one township, provided to be made by the aforesaid fifth section of said act, shall be offered for sale, in the same manner as the other public lands in the same district.

The township reserved by act of 3d March, 1815, to be sold.

CHAPTER 22.

An act, to enable the people of the western part of the Mississippi territory to form a constitution and state government, and for the admission of such state into the union, on an equal footing with the original states.

Passed March 1, 1817.

Sec. 1. *Be it enacted by the senate and house of representatives of the United States of America in congress assembled,* That the inhabitants of the western part of the Mississippi territory be, and they hereby are, authorised to form for themselves a constitution and state government, and to assume such name as they shall deem proper; and the said state, when formed, shall be admitted into the union upon the same footing with the original states, in all respects whatever.

Inhabitants of the western part of the Mississippi to form a state government, be admitted into the union.

Sec. 2. The said state shall consist of all the territory included within the following boundaries, to wit: Beginning on the river Mississippi at the point where the southern boundary line of the state of Tennessee strikes the same, thence east along the said boundary line to the Tennessee river, thence up the same to the mouth of Bear creek, thence by a direct line to the north-west corner of the county of Washington, thence due south to the Gulf of Mexico, thence westwardly, including all the islands within six leagues of the shore, to the most eastern junction of Pearl river with Lake Borgne, thence up said river to the thirty-first degree of north latitude, thence west along the said degree of latitude to the Mississippi river, thence up the same to the beginning.

Boundaries of the state.

Sec. 3. All free white male citizens of the United States, who shall have arrived at the age of twenty-one years, and resided within the said territory at least one year previous to the time of holding the election, and shall have paid a county or territorial tax, and all persons having in other respects the legal qualifications to vote for representatives in the general assembly of the said territory, be, and they are hereby, authorised to choose representatives to form a convention, who shall be apportioned among the several counties within the said territory, as follows, to wit: from the county of Warren, two representatives; from the county of Claiborne, four representatives; from the county of Jefferson, four representatives; from the county of Adams, eight representatives; from the county of Franklin, two representatives; from the county of Wilkinson, six representatives; from the county of Amite, six representatives; from the county of Pike, four representatives; from the county of

Qualifications of persons authorised to choose representatives, to form a convention.

Apportionment of representatives to form a convention.

Time and manner of holding the election.

Lawrence, two representatives; from the county of Marion, two representatives; from the county of Hancock, two representatives; from the county of Wayne, two representatives; from the county of Greene, two representatives; from the county of Jackson, two representatives; and the election of the representatives aforesaid shall be holden on the first Monday and Tuesday in June next, throughout the several counties abovementioned, and shall be conducted in the same manner as is prescribed by the laws of said territory, regulating elections therein for members of the house of representatives.

Convention to meet at Washington in July 1817, and to determine, &c.

The government to be republican, and not repugnant to the ordinance of 13th July, 1787.

Reservations and conditions of admission to the union.

Sec. 4. The members of the convention, thus duly elected, be, and they hereby are, authorised to meet at the town of Washington, on the first Monday of July next; which convention, when met, shall first determine, by a majority of the whole number elected, whether it be or be not expedient, at that time, to form a constitution and state government for the people within the said territory; and if it be determined to be expedient, the convention shall be, and hereby are, authorised to form a constitution and state government: *Provided*, That the same, when formed, shall be republican, and not repugnant to the principles of the ordinance of the thirteenth of July, one thousand seven hundred and eighty-seven, between the people and states, of the territory northwest of the river Ohio, so far as the same has been extended to the said territory by the articles of agreement between the United States and the state of Georgia, or of the constitution of the United States: *And provided also*, That the said convention shall provide, by an ordinance irrevocable without the consent of the United States, that the people inhabiting the said territory do agree and declare that they forever disclaim all right or title to the waste or unappropriated lands lying within the said territory, and that the same shall be and remain at the sole and entire disposition of the United States; and moreover, that each and every tract of land sold by congress, shall be and remain exempt from any tax laid by the order, or under the authority, of the state, whether for state, county, township, parish, or any other purpose whatever, for the term of five years, from and after the respective days of the sales thereof, and that the lands belonging to citizens of the United States, residing without the said state, shall never be taxed higher than the lands belonging to persons residing therein; and that no taxes shall be imposed on lands the property of the United States; and that the river Mississippi, and the navigable rivers and waters leading into the same, or into the Gulf of Mexico, shall be common high-ways, and forever free, as well to the inhabitants of the said state, as to other citizens of the United States, without any tax, duty, impost, or toll, therefor, imposed by the said state.

Reservation of 5 per cent. on lands sold, for

Sec. 5. Five per cent. of the nett proceeds of the lands lying within the said territory, and which shall be sold by congress from and after the first day of December next, after deducting all expenses incident to the same, shall be reserved for making public roads and canals; of which, three-fifths shall be applied to those objects within the said state, under the direction of the legislature thereof, and two-fifths to the making of a road or roads leading to the said state, under the direction of congress: *Provided*, That the application of such proceeds shall not be made until after payment is completed of the one million two hundred and fifty thousand dollars due to the state of Georgia, in consideration of the cession to the United States, nor until the payment of all the stock which has been or shall be created by the act, entitled "An act providing for the indemnification of certain claimants of public lands in the Mississippi territory," shall be completed. *And provided also*, That the said five per cent. shall not be calculated on any part of such proceeds as shall be applied to the payment of the one million two hundred and fifty thousand dollars due to the state of Georgia, in consideration of the cession to the United States, or in payment of the stock which has or shall be created by the act, entitled "An act providing for the indemnification of certain claimants of public lands in the Mississippi territory."

making roads and canals.

Prior obligations to Georgia, to be first discharged.

The 5 per cent. not to be calculated on certain proceeds.

SEC. 6. Until the next general census shall be taken, the said state shall be entitled to one representative in the house of representatives of the United States.

The state entitled to one representative in congress.

CHAPTER 23.

CONSTITUTION AND FORM OF GOVERNMENT, FOR THE

State of Mississippi.

PREAMBLE.

WE, the representatives of the people inhabiting the western part of the Mississippi territory, contained within the following limits, to wit: Beginning on the river Mississippi, at the point where the southern boundary line of the state of Tennessee strikes the same; thence east along the said boundary line to the Tennessee river; thence up the same to the mouth of Bear creek; thence by a direct line to the north west corner of the county of Washington; thence due south to the Gulf of Mexico; thence westwardly, including all islands within six leagues of the shore, to the most eastern junction of Pearl river with lake Borgne; thence up said river to the thirty-first degree of north latitude; thence west along the said degree of latitude to the Mississippi river; thence up the same to the beginning —Assembled in convention, at the town of Washington, on Monday the seventh day of July, one thousand eight hundred and seventeen, in pursuance of an act of congress, entitled "An act, to enable the people of the western part of the Mississippi

Boundaries of the state.

territory to form a constitution and state government; and for the admission of such state into the union on an equal footing with the original states;" in order to secure to the citizens thereof the rights of life, liberty, and property; do ordain and establish the following constitution and form of government, and do mutually agree with each other to form ourselves into a free and independent state, by the name of the STATE OF MISSISSIPPI.

ARTICLE 1.

DECLARATION OF RIGHTS.

That the general, great and essential principles of liberty and free government, may be recognised and established, WE DECLARE:

Equality of rights.

SEC. 1. That all freemen when they form a social compact, are equal in rights; and that no man or set of men, are entitled to exclusive, separate public emoluments or privileges, from the community, but in consideration of public services.

Source of political power.

Right to alter form of government.

SEC. 2. That all political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit; and therefore, they have at all times, an unalienable and indefeasible right to alter or abolish their form of government, in such manner as they may think expedient.

Religious profession and worship.

SEC. 3. The exercise and enjoyment of religious profession and worship, without discrimination, shall forever be free to all persons in this state: *Provided*, That the right hereby declared and established shall not be so construed as to excuse acts of licentiousness; or justify practices inconsistent with the peace and safety of this state.

No preference by law, to any sect.

SEC. 4. No preference shall ever be given by law to any religious sect, or mode of worship.

Persons not to be molested for their opinions.

SEC. 5. That no person shall be molested for his opinions on any subject whatever nor suffer any civil or political incapacity, or acquire any civil or political advantage, in consequence of such opinions, except in cases provided for in this constitution.

Right to speak, write and publish sentiments.

SEC. 6. Every citizen may freely speak, write, and publish, his sentiments on all subjects, being responsible for the abuse of that liberty.

Liberty of speech or of the press, not to be restrained.

SEC. 7. No law shall ever be passed to curtail or restrain the liberty of speech, or of the press.

Libels Evidence.

Right of the jury.

SEC. 8. In all prosecutions or indictments for libels, the truth may be given in evidence, and the jury shall have the right to determine the law and the facts under the direction of the court.

Security from searches and seizures.

Restrictions as to search warrants.

SEC. 9. That the people shall be secure in their persons, houses, papers and possessions, from unreasonable seizures or searches; and that no warrant to search any place, or to seize any person or things, shall issue without describing them as nearly as may be, nor without probable cause supported by oath or affirmation.

Rights of the accused in criminal prosecutions.

Sec. 10. That, in all criminal prosecutions, the accused hath a right to be heard by himself and counsel, to demand the nature and cause of the accusation, to be confronted by the witnesses against him, to have compulsory process for obtaining witnesses in his favor; and, in all prosecutions by indictment or information, a speedy public trial, by an impartial jury of the county; that he cannot be compelled to give evidence against himself; nor can he be deprived of his life, liberty or property, but by due course of law.

Security from arrest, &c.

Sec. 11. No person shall be accused, arrested, or detained, except in cases ascertained by law, and according to the forms which the same has prescribed; and no person shall be punished but in virtue of a law established and promulgated prior to the offence, and legally applied.

Proceeding for indictable offences.

Sec. 12. That no person shall, for any indictable offence, be proceeded against criminally by information, except in cases arising in the land or naval forces, or the militia when in actual service, or by leave of the court, for misdemeanor in office.

But one trial for same offence.

Right of private property.

Sec. 13. No person shall, for the same offence, be twice put in jeopardy of life or limb; nor shall any person's property be taken or applied to public use, without the consent of his representatives, and without just compensation being made therefor.

Right of redress for injuries.

Sec. 14. That all courts shall be open, and every person, for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law, and right, and justice administered without sale, denial or delay.

Power of suspending laws.

Sec. 15. That no power of suspending laws shall be exercised, except by the legislature, or its authority.

Excessive bail not to be required, &c.

Sec. 16. That excessive bail shall not be required, nor excessive fines imposed, nor cruel punishment inflicted.

Prisoners in what cases bailable.

Writ of *habeas corpus.*

Sec. 17. That all prisoners, shall, before conviction, be bailable by sufficient securities, except for capital offences, when the proof is evident, or the presumption great; and the privilege of the writ of *habeas corpus* shall not be suspended unless, when in case of rebellion or invasion the public safety may require it.

The person of debtor when not to be detained.

Sec. 18. That the person of a debtor, where there is not strong presumption of fraud, shall not be detained in prison, after delivering up his estate for the benefit of his creditors, in such manner as shall be prescribed by law.

No *ex post facto* law.

Sec. 19. That no *ex post facto* law, nor law impairing the obligation of a contract, shall be made.

No attainder of treason or felony.

Sec. 20. That no person shall be attainted of treason or felony by the legislature.

No forfeiture in case of suicide or death by casualty.

Sec. 21. That the estates of suicides shall descend or vest as in cases of natural death; and if any person shall be killed by casualty, there shall be no forfeiture by reason thereof.

Right of citizens to assem-

Sec. 22. That the citizens have a right, in a peaceable manner, to assemble together for their common good, and [illegible] apply to those invested with the powers of government, for redress of ble and petition for redress.

grievances, or other proper purposes, by petition, address or remonstrance.

Right to bear arms

SEC. 23. Every citizen has a right to bear arms in defence of himself and the state.

Subordination of military to civil power.

SEC. 24. No standing army shall be kept up without the consent of the legislature; and the military shall, in all cases, and at all times, be in a strict subordination to the civil power.

Quartering of soldiers.

SEC. 25. That no soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

No hereditary emoluments.

SEC. 26. That no hereditary emoluments, privileges or honors, shall ever be granted or conferred in this state.

No citizen to be exiled, &c.

SEC. 27. No citizen of this state shall be exiled, or prevented from emigrating on any pretence whatever.

Trial by jury

SEC. 28. The right of trial by jury shall remain inviolate.

Right to prosecute and defend.

SEC. 29. No person shall be debarred from prosecuting or defending any civil cause, for, or against him or herself, before any tribunal in this state, by him or herself, or counsel or both.

CONCLUSION.

Every thing in this article is excepted out of the general powers of government.

To guard against transgressions of the high powers herein delegated, we declare, that every thing in this article is excepted out of the general powers of government, and shall forever remain inviolate, and that all laws contrary thereto, or to the following provisions shall be void.

ARTICLE 2.

DISTRIBUTION OF POWERS.

Government divided into three departments.

SEC. 1. The powers of the government of the state of Mississippi, shall be divided into three distinct departments, and each of them be confided to a separate body of magistracy, to wit: those which are legislative, to one, those which are executive, to another, and those which are judicial, to another.

Powers of one department not to be exercised by persons in another.

SEC. 2. No person or collection of persons, being of one of those departments, shall exercise any power, properly belonging to either of the others, except in the instances hereinafter expressly directed or permitted.

ARTICLE 3.

LEGISLATIVE DEPARTMENT.

Qualifications of electors.

SEC. 1. Every free white male person of the age of twenty-one years or upwards, who shall be a citizen of the United States, and shall have resided in this state one year, next preceding an election, and the last six months within the county, city or town in which he offers to vote, and shall be enrolled in the militia thereof, except exempted by law from military service; or having the aforesaid qualifications of citizenship and residence, shall have paid a state or county tax, shall be deemed a qualified elector: but no elector shall be entitled to vote, except in the county, city or town (entitled to separate representation) in which he may reside at the time of the election.

Privilege of electors from arrest.

Sec. 2. Electors shall, in all cases, except in those of treason, felony, or breach of the peace, be privileged from arrest, during their attendance at elections, and in going to, and returning from the same.

Manner of voting.

Sec. 3. The first election shall be by ballot, and all future elections, by the people, shall be regulated by law.

Legislative powers vested in two branches.

General assembly.

Style of laws.

Sec. 4. The legislative power of this state shall be vested in two distinct branches: the one to be styled "the senate," the other "the house of representatives;" and both together "the general assembly of the state of Mississippi." And the style of their laws shall be, "Be it enacted by the senate and house of representatives of the state of Mississippi in general assembly convened."

Representatives how chosen.

Sec. 5. The members of the house of representatives shall be chosen by the qualified electors, and shall serve for the term of one year, from the day of the commencement of the general election, and no longer.

Term of service

When chosen.

Sec. 6. The representatives shall be chosen every year, on the first Monday and the day following in August.

Qualifications of a representative.

Sec. 7. No person shall be a representative, unless he be a citizen of the United States, and shall have been an inhabitant of this state two years next preceding his election, and the last year thereof a resident of the county, city or town for which he shall be chosen; and shall have attained to the age of twenty-two years; and also, unless he shall hold, in his own right within this state, one hundred and fifty acres of land, or an interest in real estate of the value of five hundred dollars, at the time of his election, and for six months previous thereto.

Elections, where held.

Sec. 8. Elections for representatives for the several counties, shall be held at the places of holding their respective courts, or in the several election districts into which the legislature may divide any county: *Provided*, that when it shall appear to the legislature, that any city or town hath a number of free white inhabitants equal to the ratio then fixed, such city or town shall have a separate representation, according to the number of free white inhabitants therein, which shall be retained so long as such city or town shall contain a number of free white inhabitants equal to the existing ratio, and thereafter and during the existence of the right of separate representation in such city or town, elections for the county in which such city or town, entitled to a separate representation is situated, shall not be held in such city or town. *And provided*, That if the residuum or fraction of any city or town, entitled to separate representation shall, when added to the residuum in the county in which it may lie, be equal to the ratio fixed by law, for one representative; then the aforesaid county, city or town, having the largest residuum shall be entitled to such representation: *And provided also*, That when there are two or more counties ad-

When a city or town shall have a separate representation.

Residuum over the ratio fixed by law for representation.

joining, which have residuums over and above the ratio then fixed by law, if said residuums when added together will amount to such ratio, in that case one representative shall be added to that county having the largest residuum.

Enumeration of the free white inhabitants to be made.

Sec. 9. The general assembly shall, at their first meeting, and in the year one thousand eight hundred and twenty, and in not less than every three nor more than every five years thereafter, cause an enumeration to be made of all the free white inhabitants of the state; and the whole number of representatives shall, at the several periods of making such enumeration, be fixed by the general assembly, and apportioned among the several counties, cities or towns, entitled to separate representation, according to the number of free white inhabitants in each, and shall not be less than twenty-four, nor greater than thirty-six, until the number of free white inhabitants shall be eighty thousand; and after that event, at such ratio, that the whole number of representatives shall never be less than thirty-six, nor more than one hundred: *Provided, however*, That each county shall always be entitled to at least one representative.

Representatives to be apportioned according to the number of inhabitants

Number of representatives.

Apportionment of senators.

Sec. 10. The whole number of senators shall, at the several periods of making the enumeration before mentioned, be fixed by the general assembly, and apportioned among the several districts to be established by law, according to the number of free white taxable inhabitants in each, and shall never be less than one fourth, nor more than one third, of the whole number of representatives.

Senators to be chosen for three years

To be divided into three classes.

One third of the senatorial seats to be vacated annually

Sec. 11. The senators shall be chosen by the qualified electors, for three years, and on their being convened in consequence of the first election, they shall be divided by lot from their respective districts into three classes, as nearly equal as can be. The seats of the senators of the first class shall be vacated at the expiration of the first year, and of the second class at the expiration of the second year, and of the third class at the expiration of the third year, so that one third thereof may be annually chosen thereafter.

Classifying additional senators.

Sec. 12. Such mode of classifying new additional senators shall be observed, as will, as nearly as possible, preserve an equality of numbers in each class.

Senatorial districts.

Sec. 13. When a senatorial district shall be composed of two or more counties, it shall not be entirely separated by any county belonging to another district; and no county shall be divided in forming a district.

Qualifications of a senator.

Sec. 14. No person shall be a senator, unless he be a citizen of the United States, and shall have been an inhabitant of this state four years next preceding his election, and the last year thereof a resident of the district for which he shall be chosen, and shall have attained to the age of twenty-six years; and also, unless he shall hold, in his own right, within this state, three hundred acres of land, or an interest in real estate of the value of one thousand dollars at the time of his election, and for six months previous thereto.

Sec. 15. The house of representatives, when assembled, shall choose a speaker, and its other officers; and the senate shall choose its officers, except the president; and each house shall judge of the qualifications and elections of its own members. but a contested election, shall be determined in such manner as shall be directed by law. A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members, in such manner and such penalties as each house may provide.

Each house to choose its officers.
And judge of the qualification and elections of its members.
Quorum.
Power of a smaller number.

Sec. 16. Each house may determine the rules of its own proceedings, punish members for disorderly behavior, and with the consent of two thirds, expel a member; but not a second time for the same cause; and shall have all other powers necessary for a branch of the legislature of a free and independent state.

Powers of each house.
Limited as to expulsion.

Sec. 17. Each house shall keep a journal of its proceedings, and publish the same, excepting such parts as in its judgment may require secrecy; and the yeas and nays of the members of either house, on any question shall, at the desire of any three members present, be entered on the journals.

Journal.
Yeas and nays.

Sec. 18. When vacancies happen in either house, the governor or the person exercising the powers of the governor, shall issue writs of election to fill such vacancies.

Writs of election in case of vacancies.

Sec. 19. Senators and representatives shall, in all cases except of treason, felony or breach of the peace, be privileged from arrest during the session of the general assembly, and in going to, and returning from the same, allowing one day for every twenty miles, such member may reside from the place at which the general assembly is convened.

Privilege from arrest.

Sec. 20. Each house may punish by imprisonment, during the session, any person not a member, for disrespectful or disorderly behavior in its presence, or for obstructing any of its proceedings: *Provided*, such imprisonment shall not, at any one time exceed forty-eight hours.

Imprisonment of persons not members.

Sec. 21. The doors of each house shall be open, except on such occasions, as in the opinion of the house, may require secrecy.

Doors of each house to be open
Exception.

Sec. 22. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting.

Adjournment.

Sec. 23. Bills may originate in either house, and be amended, altered or rejected, by the other, but no bill shall have the force of a law until on three several days, it be read in each house, and free discussion be allowed thereon, unless in cases of urgency, four fifths of the house in which the bill shall be pending may deem it expedient to dispense with this rule: and every bill having passed both houses, shall be signed by the speaker and president of their respective houses.

Manner of passing bills.
When passed to be signed by the speaker and president.

Sec. 24. All bills for raising revenue shall originate in the house of representatives, but the senate may amend or reject them as other bills.

Bills for raising revenue.

Sec. 25. Each member of the general assembly shall receive from the public treasury, a compensation for his services, which

Compensation of Members.

may be increased or diminished by law; but no increase of compensation shall take effect during the session at which such increase shall have been made.

To what offices senators and representatives are not eligible.

Sec. 26. No senator or representative shall, during the term for which he shall have been elected, nor for one year thereafter, be appointed to any civil office of profit under this state, which shall have been created, or the emoluments of which shall have been increased, during such term; except such offices as may be filled by elections by the people, and no member of either house of the general assembly shall, after the commencement of the first session of the legislature after his election, and during the remainder of the term for which he is elected, be eligible to any office or place; the appointment to which may be made in whole or in part by either branch of the general assembly.

What officers are not eligible to the general assembly.

Sec. 27. No judge of any court of law or equity, secretary of state, attorney general, clerk of any court of record, sheriff, or collector, or any person holding a lucrative office under the United States, (the office of post master excepted,) or this state, shall be eligible to the general assembly: *Provided*, That offices in the militia, to which there is attached no annual salary, or the office of justice of the peace, or of the quorum shall not be deemed lucrative.

Collectors or holders of publi moneys.

Sec. 28. No person who hath heretofore been, or hereafter may be, a collector or holder of public moneys, shall have a seat in either house of the general assembly, until such person shall have accounted for, and paid into the treasury, all sums for which he may be accountable.

First election of senators and representatives.

Annual election for senators.

Sec. 29. The first election for senators and representatives shall be general throughout the state, and shall be held on the first Monday and Tuesday in September next; and thereafter, there shall be an annual election for senators to fill the places of those whose term of service may have expired.

Meeting of the general assembly.

Sec. 30. The first session of the general assembly shall commence on the first Monday in October next, and be held at the city of Natchez, and thereafter at such place as may be directed by law; and thereafter the general assembly shall meet on the first Monday in November, in every year, and at no other period, unless directed by law, or provided for by this constitution.

ARTICLE 4.

EXECUTIVE DEPARTMENT.

Governor.

Sec. 1. The supreme executive power of this state shall be vested in a governor, who shall be elected by the qualified electors, and shall hold his office for two years from the time of his installation, and until his successor be duly qualified.

Tenure of office.

Return of election for governor.

Sec. 2. The returns of every election for governor, shall be sealed up and transmitted to the seat of government, directed to the secretary of state, who shall deliver them to the speaker of the house of representatives, at the next ensuing session of the general assembly, during the first week of which session, the said speaker shall open and publish them in presence of both houses of the general assembly. The person having the highest number of votes shall be governor; but if two or more shall be equal and highest in votes, one of them shall be chosen governor by the joint ballot of both houses.

Choice by the general assembly in which case and how made.

Contested elections for governor shall be determined by both houses of the general assembly, in such manner as shall be prescribed by law.

Contested elections for governor.

Sec. 3. The governor shall be at least thirty years of age, shall have been a citizen of the United States for twenty years, shall have resided in this state at least five years next preceding the day of his election, and shall be seized in his own right of a freehold estate of six hundred acres of land, or of real estate of the value of two thousand dollars at the time of his election, and twelve months previous thereto.

Qualifications of governor.

Sec. 4. He shall at stated times receive a compensation for his services, which shall not be increased or diminished during the term for which he shall have been elected.

Compensation.

Sec. 5. He shall be commander in chief of the army and navy of this state, and of the militia, except when they shall be called into the service of the United States.

Commander of the army, navy, &c.

Sec. 6. He may require information in writing from the officers in the executive department, on any subject relating to the duties of their respective offices.

Governor may require information.

Sec. 7. He may, on extraordinary occasions, convene the general assembly, at the seat of government, or at a different place, if that shall have become, since their last adjournment, dangerous from an enemy or from contagious disorders; and in case of disagreement between the two houses with respect to the time of adjournment, adjourn them to such time as he shall think proper, not beyond the day of the next annual meeting of the general assembly.

May convene the general assembly.

Power as to adjournment.

Sec. 8. He shall, from time to time, give to the general assembly, information of the state of the government, and recommend to their consideration, such measures as he shall deem expedient.

Shall give information to the general assembly.

Sec. 9. He shall take care that the laws be faithfully executed.

Execution of the laws.

Sec. 10. In all criminal and penal cases, except in those of treason and impeachment, he shall have power to grant reprieves and pardons, and remit fines and forfeitures, under such rules and regulations as shall be prescribed by law. In cases of treason he shall have power to grant reprieves and pardons, by and with the advice and consent of the senate, but may respite the sentence until the end of the next session of the general assembly.

Power to grant reprieves and pardons.

Sec. 11. All commissions shall be in the name, and by the authority of the state of Mississippi, be sealed with the state seal, and signed by the governor, and attested by the secretary of state.

Commissions.

Sec. 12. There shall be a seal of this state, which shall be

Great seal

kept by the governor, and used by him officially, and shall be called the great seal of the state of Mississippi.

Vacancies which happen during the recess of the general assembly.

Sec. 13. When a vacancy shall happen in any office, during the recess of the general assembly, the governor shall have power to fill the same by granting a commission, which shall expire at the end of the next session of the general assembly, except in cases otherwise directed by this constitution.

Secretary of state.

Sec. 14. A secretary of state shall be appointed, who shall continue in office during the term of two years. He shall keep a fair register of all the official acts and proceedings of the governor, and shall, when required, lay the same and all papers, minutes, and vouchers, relative thereto, before the general assembly, and shall perform such other duties as may be required of him by law.

Bills approved or returned by governor.

Proceedings on bills returned by the governor.

Sec. 15. Every bill which shall have passed both houses of the general assembly, shall be presented to the governor; if he approve, he shall sign it; but if not, he shall return it, with his objections, to the house in which it shall have originated, who shall enter the objections at large upon the journals, and proceed to reconsider it; if, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent with the objections to the other house, by which it shall likewise be reconsidered; if approved by two-thirds of that house, it shall become a law: but in such cases the votes of both houses shall be determined by yeas and nays, and the names of the members voting for, and against the bill, shall be entered on the journals of each house respectively: If any bill shall not be returned by the governor, within six days (Sundays excepted,) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the general assembly, by their adjournment, prevent its return, in which case, it shall not be a law.

Joint resolutions, except for adjournment, to receive the same sanction as bills.

Sec. 16. Every order, resolution, or vote, to which the concurrence of both houses may be necessary, except on questions of adjournment, shall be presented to the governor, and before it shall take effect, be approved by him, or, being disapproved, shall be re-passed by both houses, according to the rules and limitations prescribed in the case of a bill.

Appointment of officers.

Sec. 17. The appointment of all officers, not otherwise directed by this constitution, shall be by the joint vote of both houses of the general assembly; the votes shall be given *viva voce*, and recorded in the public journal of each house: *Provided*, That the general assembly be authorised to provide by law, for the appointment of all inspectors, collectors and their deputies, surveyors of highways, constables, and such other inferior officers whose jurisdictions may be confined within the limits of the county.

Lieut. governor when and how chosen.

Sec. 18. There shall be also a lieutenant governor, who shall be chosen at every election for a governor, by the same persons, in the same manner, continue in office for the same time, and possess the same qualifications. In voting for governor and lieutenant governor, the electors shall distinguish whom they vote for as governor, and whom as lieutenant governor.

President of the senate.

Sec. 19. The lieutenant governor shall, by virtue of his office, be president of the senate, and have, when in committee of the whole, a right to debate and vote on all questions, and when the senate is equally divided, to give the casting vote.

In what cases the powers of the governor shall devolve on the lieutenant governor.

Sec. 20. In case of the death, resignation, refusal to serve, or removal from office of the governor, or of his impeachment, or absence from the state, the lieutenant governor shall exercise the powers and authority appertaining to the office of governor, until another be chosen at the next periodical election for a governor, and be duly qualified; or until the governor impeached or absent, shall be acquitted or return.

President of the senate *pro tempore*.

In what cases to administer the government.

Compensation of the lieutenant governor.

Sec. 21. Whenever the government shall be administered by the lieutenant governor, or he shall be unable to attend as president of the senate, the senate shall elect one of their own members as president *pro tempore*. And if, during the vacancy of the office of governor the lieutenant governor shall die, resign, refuse to serve, or be removed from office, or if he shall be impeached, or absent from the state, the president of the senate *pro tempore*, shall, in like manner, administer the government, until he shall be superseded by a governor, or lieutenant governor. The lieutenant governor shall, whilst he acts as president of the senate, receive for his services the same compensation which shall for the same period be allowed to the speaker of the house of representatives, and no more; and during the time he administers the government as governor, shall receive the same compensation which the governor would have received, had he been employed in the duties of his office, and no more.

Of the president *pro tempore* of the senate while he administers the government.

Sec. 22. The president *pro tempore* of the senate shall, during the time he administers the government, receive in like manner, the same compensation which the governor would have received, had he been employed in the duties of his office, and no more.

In what case the senate to be convened to choose a president *pro tempore*.

Sec. 23. If the lieutenant governor shall be required to administer the government, and shall, whilst in such administration die, resign, or be absent from the state, during the recess of the general assembly, it shall be the duty of the secretary of state, for the time being, to convene the senate for the purpose of choosing a president *pro tempore*.

Sheriff and coroners.

Sec. 24. A sheriff and one or more coroners shall be elected in each county, by the qualified electors thereof, who shall hold their offices for two years, unless sooner removed.

Treasurer and auditor.

Sec. 25. A state treasurer and an auditor of public accounts, shall be annually appointed.

MILITIA.

Organizing and disciplining the militia.

Sec. 1. The general assembly shall provide by law, for organizing and disciplining the militia of this state in such manner as they shall deem expedient, not incompatible with the constitution and laws of the United States, in relation thereto.

Officers of the militia.

Sec. 2. Officers of the militia shall be elected or appointed in such manner as the legislature shall, from time to time direct, and shall be commissioned by the governor.

Persons who scruple to bear arms.

Sec. 3. Those persons who conscientiously scruple to bear arms, shall not be compelled to do so, but shall pay an equivalent for personal service.

Power to call forth the militia.

Sec. 4. The governor shall have power to call forth the militia to execute the laws of the state, to suppress insurrections, and repel invasions.

ARTICLE 5.

JUDICIAL DEPARTMENT.

Judicial power how vested.

Sec. 1. The judicial power of this state shall be vested in one supreme court, and such superior and inferior courts of law and equity, as the legislature may, from time to time, direct and establish.

Judges of the supreme and superior courts.

Sec. 2. There shall be appointed in this state, not less than four nor more than eight judges of the supreme and superior courts, who shall receive for their services a compensation, which shall be fixed by law, and shall not be diminished during their continuance in office: *Provided*, That the judge whose decision is under consideration in the supreme court, shall not constitute one of the court to determine the question on such decision, but it shall be the duty of such judge to report to the supreme court the reasons upon which his opinion was founded.

State to be divided into districts.

Sec. 3. The state shall be divided into convenient districts, and each district shall contain not less than three nor more than six counties. For each district there shall be appointed a judge, who shall after his appointment, reside in the district for which he is appointed.

Jurisdiction of the superior court.

Sec. 4. The superior court shall have original jurisdiction in all matters civil and criminal within this state, but in civil cases, only where the matter or sum in controversy exceeds fifty dollars.

A superior court to be held in each county twice in every year.

Sec. 5. A superior court shall be held in each county in the state, at least twice in every year. The judges of the several superior courts may hold courts for each other, when they may deem it expedient, or as they may be directed by law.

Courts of chancery.

Sec. 6. The legislature shall have power to establish a court or courts of chancery with exclusive original equity jurisdiction, and until the establishment of such court or courts, the said jurisdiction shall be vested in the superior courts respectively.

Court of probate.

Sec. 7. The legislature shall have power to establish in each county within this state, a court of probate, for the granting of letters testamentary and of administration, for orphans' business, for county police and for the trial of slaves.

Justices of the peace.

Sec. 8. A competent number of justices of the peace shall be appointed in and for each county, in such mode, and for such term of office as the legislature shall direct. Their jurisdiction in civil cases shall be limited to causes in which the amount in

Jurisdiction. Right of appeal.

controversy shall not exceed fifty dollars. And in all cases tried by a justice of the peace, the right of appeal shall be secured, under such rules and regulations as shall be prescribed by law.

Judges to hold their offices during good behavior. In what manner removable.

Sec. 9. The judges of the several courts of this state shall hold their offices during good behaviour. And for wilful neglect of duty, or other reasonable cause, which shall not be sufficient ground for an impeachment, the governor shall remove any of them on the address of two-thirds of each house of the general assembly: *Provided, however*, That the cause or causes for which such removal shall be required, shall be stated at length in such address, and on the journals of each House: *And, provided further*, That the judge so intended to be removed, shall be notified and admitted to a hearing in his own defence, before any vote for such address shall pass.

Limitation as to age.

Sec. 10. No person who shall have arrived at the age of sixty-five years, shall be appointed to, or continue in the office of judge in this state.

Clerks.

Sec. 11. Each court shall appoint its own clerk, who shall hold his office during good behaviour, but shall be removable therefrom for neglect of duty or misdemeanor in office by the supreme court, which court shall determine both the law and the fact: *Provided*, That the clerk so appointed shall have been a resident of the county in which he is clerk, at least six months previous to his appointment.

Conservators of the peace.

Sec. 12. The judges of the supreme and superior courts, shall by virtue of their office, be conservators of the peace throughout the state.

Style of process, &c.

Sec. 13. The style of all process shall be "The State of Mississippi," and all prosecutions shall be carried on in the name and by the authority of "The State of Mississippi," and shall conclude "Against the peace and dignity of the same."

Attorney general and district attorneys.

Sec. 14. There shall be an attorney general for the state, and as many district attorneys as the general assembly may deem necessary, who shall hold their offices for the term of four years, and shall receive for their services a compensation, which shall not be diminished during their continuance in office.

IMPEACHMENTS.

Power of impeachment.

Sec. 1. The house of representatives shall have the [illegible] power of impeaching.

Trial of impeachments.

Sec. 2. All impeachments shall be tried by the senate: When sitting for that purpose the senators shall be on oath or affirmation: No person shall be convicted without the concurrence of two-thirds of the members present.

Who liable to impeachment. Judgment limited.

Sec 3. The governor and all civil officers, shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall not extend further than to removal from office, and disqualification to hold any office of honor, trust, or profit, under the state: but the party convicted shall nevertheless, be liable and subject to indictment, trial, and punishment, according to law, as in other cases.

ARTICLE 6.

GENERAL PROVISIONS.

Official oath.

Sec. 1. Members of the general assembly, and all officers, executive and judicial; before they enter on the execution of their respective offices, shall take the following oath or affirmation, to wit: "I solemnly swear (or affirm, as the case may be) that I will support the constitution of the United States and the constitution of the state of Mississippi, so long as I continue a citizen thereof, and that I will faithfully discharge to the best of my abilities, the duties of the office of———— according to law. So help me God."

Form.

Laws to suppress duelling.

Sec. 2. The general assembly shall have power to pass such penal laws to suppress the evil practice of duelling, extending to disqualification from office, or the tenure thereof as they may deem expedient.

Treason defined.

Sec. 3. Treason against the state shall consist only in levying war against it, or in adhering to its enemies giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or his own confession in open court.

Evidence.

Disqualification from office for bribery in election.

Sec. 4. Every person shall be disqualified from holding an office or place of honor or profit under the authority of this state, who shall be convicted of having given or offered any bribe to procure his election.

Exclusion from office and suffrage for high crimes and misdemeanors.

Sec. 5. Laws shall be made to exclude from office, and from suffrage, those who shall thereafter be convicted of bribery, perjury, forgery or other high crimes or misdemeanors. The privilege of free suffrage shall be supported by laws regulating elections, and prohibiting, under adequate penalties, all undue influence thereon, from power, bribery, tumult, or other improper conduct.

Persons who deny the being of a *God*, &c.

Sec. 6. No person who denies the being of a God, or a future state of rewards and punishments, shall hold any office in the civil department of this state.

Ministers of the gospel not eligible to the office of governor or to a seat in the general assembly.

Sec. 7. Ministers of the gospel, being by their profession dedicated to God, and the care of souls, ought not to be diverted from the great duties of their functions——Therefore, no minister of the gospel or priest of any denomination whatever shall be eligible to the office of governor, lieutenant governor, or to a seat in either branch of the general assembly.

Appropriation of money.

Sec. 8. No money shall be drawn from the treasury but in consequence of an appropriation made by law; nor shall any appropriation of money for the support of an army be made for a longer term than one year; and a regular statement and account of the receipts and expenditures of all public money shall be published annually.

Sec. 9. No bank shall be incorporated by the legislature without the reservation of a right to subscribe for, in behalf of the state, at least one-fourth part of the capital stock thereof, and the appointment of a proportion of the directors, equal to the stock subscribed for.

Right to be reserved in the incorporation of banks.

Interest.

Sec. 10. The general assembly shall pass no law impairing the obligation of contracts, prior to the year one thousand eight hundred and twenty one, on account of the rate of interest, fairly agreed on in writing between the contracting parties for a *bona fide* loan of money; but they shall have power to regulate the rate of interest where no special contract exists in relation thereto.

Suits against the state.

Sec. 11. The general assembly shall direct by law, in what manner and in what courts, suits may be brought against the state.

Tenure of offices.

Sec. 12. All officers of the state, the term of whose appointment is not otherwise directed by this constitution, shall hold their offices during good behavior.

Forfeiture of residence.

Sec. 13. Absence on business of this state, or of the United States, or on a visit, or necessary private business, shall not cause a forfeiture of a residence once obtained.

Deduction in salaries for neglect of duty.

Sec. 14. It shall be the duty of the general assembly to regulate by law, the cases in which deductions shall be made from the salaries of public officers for neglect of duty in their official capacity, and the amount of such deduction.

Officers of the United States, or foreign powers, not to hold offices under this state.

Sec. 15. No member of congress, nor any person holding any office of profit or trust under the United States, or either of them, the office of post master excepted, or under any foreign power, shall hold or exercise any office of trust or profit under this state.

Education.

Sec. 16. Religion, morality, and knowledge, being necessary to good government, the preservation of liberty, and the happiness of mankind, schools, and the means of education, shall forever be encouraged in this state.

Divorces.

Sec. 17. Divorces from the bonds of matrimony shall not be granted, but in cases provided for by law, by suit in chancery: *Provided*, That no decree for such divorce shall have effect until the same shall be sanctioned by two-thirds of both branches of the general assembly.

Returns of elections.

Sec. 18. Returns of all elections by the people shall be made to the secretary of state.

Restriction in forming new counties.

Sec. 19. No new county shall be established by the general assembly, which shall reduce the county or counties, or either of them, from which it may be taken, to a less content than five hundred and seventy-six square miles, nor shall any new county be laid off of less contents.

Lands granted by the United States for the use of schools in this state.

Sec. 20. That the general assembly shall take measures to preserve from unnecessary waste or damage, such lands as are, or may hereafter be granted by the United States for the use of schools, within each township in this state, and apply the funds which may be raised from such lands by rent or lease, in strict conformity to the object of such grant, but no lands granted for the use of such township schools, shall ever be sold by any authority in this state.

SLAVES.

Laws for the emancipation of slaves, without consent of the owner, restricted

Introduction of slaves into this state.

Sec. 1. The general assembly shall have no power to pass laws for the emancipation of slaves, without the consent of their owners, unless where a slave shall have rendered to the state some distinguished service, in which case the owner shall be paid a full equivalent for the slave so emancipated. They shall have no power to prevent emigrants to this state from bringing with them such persons as are deemed slaves by the laws of any one of the United States, so long as any person of the same age or description shall be continued in slavery by the laws of this state: *Provided*, That such person or slave be the *bona fide* property of such emigrants: *And provided, also*, That laws may be passed to prohibit the introduction into the state, of slaves who may have committed high crimes in other states.

Emancipations of slaves by the owners.

They shall have power to pass laws to permit the owners of slaves to emancipate them, saving the rights of creditors, and preventing them from becoming a public charge. They shall have full power to prevent slaves from being brought into this state as merchandise; and also, to oblige the owners of slaves to treat them with humanity, to provide for them necessary clothing and provisions, to abstain from all injuries to them extending to life and limb, or in case of their neglect or refusal to comply with the directions of such laws, to have such slave or slaves sold for the benefit of the owner or owners.

Treatment of slaves.

Mode of proceeding in the prosecution of slaves.

Sec. 2. In the prosecution of slaves for crimes, no inquest by a grand jury shall be necessary, but the proceedings in such cases shall be regulated by law; except that in capital cases, the general assembly shall have no power to deprive them of an impartial trial by a petit jury.

MODE OF REVISING THE CONSTITUTION.

Convention for amending the constitution.

Sec. 1. That whenever two-thirds of the general assembly shall deem it necessary to amend or change this constitution, they shall recommend to the electors at the next election for members of the general assembly, to vote for or against a convention, and if it shall appear that a majority of the citizens of the state, voting for representatives, have voted for a convention, the general assembly shall, at their next session, call a convention, to consist of as many members as there may be in the general assembly, to be chosen by the qualified electors, in the manner and at the times and places of choosing members of the general assembly; which convention shall meet within three months after the said election, for the purpose of revising, amending or changing the constitution.

SCHEDULE.

Rights, actions, prosecutions, &c. not affected by change of government.

SEC. 1. That no inconvenience may arise from a change of territorial to a permanent state government, it is declared that all rights, actions, prosecutions, claims, and contracts as well of individuals as of bodies corporate, shall continue as if no such change had taken place.

Fines, escheats, &c.

SEC. 2. All fines, penalties, forfeitures and escheats accruing to the Mississippi territory, within the limits of this state, shall enure to the use of the state.

Validity of bonds not impaired.

Penal actions.

Causes of action not barred.

Papers belonging to the eastern section of the Mississippi territory.

SEC. 3. The validity of all bonds and recognizances executed to the governor of the Mississippi territory, shall not be impaired by the change of government, but may be sued for and recovered in the name of the governor of the state of Mississippi, and his successors in office; and all criminal or penal actions, arising or now depending within the limits of this state, shall be prosecuted to judgment and execution in the name of the said state. All causes of action arising to individuals, and all suits at law or in equity, now depending in the several courts within the limits of this state, and not already barred by law, may be commenced in, or transferred to such courts as may have jurisdiction thereof. Bonds, recognizances and other papers and writings, properly belonging to the eastern section of the Mississippi territory, not comprized within the limits of this state, shall be transferred to the offices to which they severally belong.

Civil and military officers to continue in office.

SEC. 4. All officers, civil and military, now holding commissions under the authority of the United States, or of the Mississippi territory, within this state, shall continue to hold and exercise their respective offices under the authority of this state, until they shall be superseded under the authority of this constitution; and shall receive from the treasury of this state, the same compensation which they heretofore received for their services, in proportion to the time they shall be so employed. The governor shall have power to fill vacancies by commissions to expire so soon as elections or appointments can be made to such office by the authority of this constitution.

What laws shall continue in force.

SEC. 5. All laws and parts of laws now in force in the Mississippi territory, and not repugnant to the provisions of this constitution, shall continue and remain in force as the laws of this state, until they expire by their own limitation, or shall be altered or repealed by the legislature thereof.

Electors at the first election.

SEC. 6. Every free white male person above the age of twenty-one years, who shall be a citizen of the United States, and resident in this state at the time of the adoption of this constitution, shall be deemed a qualified elector at the first election to be held in this state; any thing in the constitution to the contrary notwithstanding.

President of the convention to issue writs of election.

SEC. 7. The president of this convention shall issue writs of election, directed to the sheriffs of the several counties, requiring them to cause an election to be held for a governor, lieutenant governor, representative to the congress of the United States, members of the general assembly and sheriffs of the respective counties, at the respective places of elections in said counties, except in the county of Warren; in which county the election shall be held at the court-house, instead of the place provided by law, on the first Monday and the day following in September next; which election shall be conducted in the manner prescribed by the existing election laws of the Mississippi territory; and the said governor, lieutenant governor and members of the general assembly, then duly elected, shall continue to discharge the duties of their respective offices for the time prescribed by this constitution, and until their successors be duly qualified.

Representatives of the several counties until the first enumeration.

SEC. 8. Until the first enumeration shall be made as directed by this constitution, the county of Warren shall be entitled to one representative; the county of Claiborne to two representatives; the county of Jefferson to two representatives; the county of Adams to four representatives; the county of Franklin to one representative; the county of Wilkinson to three representatives; the county of Amite to three representatives; the county of Pike to two representatives; the county of Lawrence to one representative; the county of Marion to one representative; the county of Hancock to one representative; the county of Green to one representative; the county of Wayne to one representative; the county of Jackson to one representative. The counties of Warren and Claiborne shall be entitled to one senator; the county of Adams to one senator; the county of Jefferson to one senator; the county of Wilkinson to one senator; the county of Amite to one senator; the counties of Franklin and Pike to one senator; the counties of Lawrence, Marion and Hancock to one senator; the counties of Green, Wayne and Jackson to one senator.

Senators.

Governor authorised to appoint an additional judge.

SEC. 9. The governor may appoint and commission an additional judge, or one of the former judges of the superior court whose commission shall expire so soon as appointments can be made under the constitution. It shall be the duty of the judge so appointed, or one of the former territorial judges, to hold superior courts in the counties of Jackson, Green, Wayne and Hancock at the time heretofore prescribed by law: *Provided*, That if either of the former territorial judges in addition to his duty in the western counties perform such duty and no additional judge be appointed, he shall receive an extra compensation proportioned to the amount of his salary and term of service rendered. If an additional judge be appointed, he shall receive the same compensation for his services as the other judges of the superior court.

Return of the votes for senators.

SEC. 10. The sheriff of Warren county shall within ten days after the election, make return of the number of votes for senator, to the sheriff of Claiborne county, who shall be the returning officer for the district. The sheriff of Pike county shall within ten days after the election make return of the number of votes for senator in his county, to the sheriff of Franklin county, who shall be the returning officer for the district. The sheriffs of Hancock and Lawrence counties, shall within ten days after the election make return of the number of votes for senator in their respective counties to the sheriff of Marion county, who shall be the returning officer for the district. The sheriffs of Jackson and Wayne counties shall within ten days after the election make return of the number of votes for senator in their respective counties to the sheriff of Green county, who shall be the returning officer for the district.

ORDINANCE.

Whereas, it is required by the act of congress under which this convention is assembled, that certain provisions should be made by an ordinance of this convention: Therefore this convention for and in behalf of the people inhabiting this state do ordain, agree, and declare that they forever disclaim all right or title to the waste or unappropriated lands lying within the state of Mississippi, and that the same shall be and remain at the sole and entire disposition of the United States, and moreover that each and every tract of land sold by congress, shall be and remain exempt from any tax laid by the order or under the authority of this state, whether for state, county, township, parish or other purposes whatever for the term of five years, from and after the respective days of sale thereof, and that the lands belonging to the citizens of the United States, residing without this state, shall never be taxed higher than the lands belonging to persons residing within the same—that no taxes shall be imposed on lands the property of the United States, and that the river Mississippi and the navigable rivers and waters leading into the same, or into the Gulf of Mexico, shall be common highways, and forever free, as well to the inhabitants of this state as to other citizens of the United States, without any duty, tax, impost or toll therefor imposed by this state;—And this ordinance is hereby declared irrevocable without the consent of the United States.

All right to waste lands, disclaimed.

Exempt from tax for five years after the sale.

Tax on lands of non-residents.

No tax on lands of the United States.

Navigable rivers to be common highways.

Done in convention, at the town of Washington, the fifteenth day of August, in the year of our Lord, 1817 and in the forty second year of the independence of the United States of America.

DAVID HOLMES,
president and delegate from Adams.

ADAMS.
Josiah Simpson,
Joseph Sessions,
James C. Wilkins,
John Taylor,
John Steele,
Edward Turner,
Christopher Rankin.
JEFFERSON.
Cowles Mead,
Hezekiah J. Balch,
Joseph E. Davis.
CLAIBORNE.
Walter Leake,
Thomas Barnes,

Daniel Burnet,
Joshua G. Clark.
WARREN.
Henry D Downs,
Andrew Glass.
FRANKLIN.
James Knox.
WILKINSON.
George Poindexter,
Daniel Williams.
Abram M. Scott,
John Joor,
Gerard C. Brandon,
Joseph Johnson.

AMITE

William Lattimore,
Henry Hanna,
Thomas Torrence,
Thomas Batchelor,
John Burton,
Angus Wilkinson.

PIKE.

William J. Minton,
David Dickson,
James Y. M'Nabb.

LAWRENCE.

Harmon Runnells,
George W. King.

MARION.

Dougal M'Laughlin,
John Ford.

HANCOCK.

Noel Jourdan,
Amos Burnet.

WAYNE.

James Patton,
Clinch Gray.

GREEN.

Laughlin M'Kay,
John M'Crae.

JACKSON.

John M'Leod,
Thomas Bilbo

LOUIS WINSTON, Secretary.

CHAPTER 24.

Summary of private and local Acts.

SALES OF ESTATE BY EXECUTORS, ADMINISTRATORS AND GUARDIANS. &c.

By the executor of Hannah Curtis.

An act, authorising the executors of the last will and testament of Hannah Curtis, deceased, to sell certain lands therein mentioned, passed, December 7, 1811, authorises the executors (or either of them) of the last will and testament of the said Hannah Curtis, deceased, to sell all the lands of which she died possessed, as well as an undivided share of a tract of land which she claimed, (as one of the heirs or legatees) of her deceased father, Samuel Sweezey: such sale shall be made at auction, on a credit of not less than twelve months, taking sufficient security of the purchasers: at least three months notice of the time and place of sale, shall have been given, in at least two newspapers published in the city of Natchez. The money arising from the sale of the lands aforesaid, shall be divided among the legatees of the said testator, or their representatives, in the same proportion as the lands are directed to be divided into by the last will and testament of the said Hannah Curtis.

Sale of estate of Asahel Lewis, deceased.

By An act, for the benefit of Isaac Guion, Sarah Guion, Archibald Lewis and others, passed, December 16, 1811, Archibald Lewis, Isaac Guion and Philip Hoggatt, are appointed commissioners to sell two tracts of land in the district of Natchez, left by Asahel Lewis, who died intestate; and the commissioners may make to the purchaser, a deed of such lands in fee simple. The said lands shall be sold in such lots or parcels, and on a credit of one, two, and three equal annual payments, as in the opinion of the commissioners will be most likely to obtain their full value. The purchasers shall give bond with at least two sufficient securities, to be approved of by the commissioners for the purchase money: at least two months previous notice of the day and place for the sale shall be given, in at least two newspapers, published in the city of Natchez:—Before the commissioners shall proceed to act, each of them shall give bond with sufficient security, to be approved of by the county court of Adams county, and made payable to the chief justice of the orphans' court of said county, for the time being, and his successors in office, in the penal sum of ten thousand dollars, conditioned for the faithful discharge of the trust herein confided to them; which bond shall be lodged with the register of the orphans' court of the county of Adams, and if the commissioners, or either of them, fail to pay over any moneys which shall come to their hands from the sale of the lands, the person or persons injured thereby, may put said bond in suit (for his or their benefit,) against such delinquent commissioner.

Sale of estate by Thomas Rodney's administrator.

By An act, to authorise William B. Shields, administrator of the honorable Thomas Rodney, late of this territory, deceased, to sell a house and lot in the town of Washington, of which the said deceased died possessed, passed, December 17, 1811, William B. Shields may sell the house and lot in the town of Washington of which Thomas Rodney died possessed, and convey to the purchaser the fee simple in said house and lot, with the appurtenances thereunto belonging, upon the purchaser giving bond with sufficient security for the payment of the purchase money: at least sixty days previous notice of the day and place of sale shall be given in at least two newspapers, published in the city of Natchez.

By administratrix of Thomas Blanchard.

By An act, authorising and empowering Amy Blanchard, relict and administratrix of Thomas Blanchard, deceased, to reconvey to the grantors, a certain tract of land therein mentioned, passed, December 12, 1812, the said Amy Blanchard may convey, on her own part, and on behalf of the infant heirs and legal representatives of said Thomas Blanchard, a certain tract of land, lying in Adams county, containing three hundred and ninety acres, and one tenth of an acre, to the grantors, Robert Andrews, Elizabeth Andrews, and Joseph B. Wilkinson, of whom said land was purchased, by said Thomas Blanchard, in his life time: said Robert Andrews, Elizabeth Andrews and Joseph B. Wilkinson shall previously thereto, or upon such reconveyance, deliver up to said Amy Blanchard, to be cancelled, every bond or bonds, note or notes, covenant or covenants, or other agreement held by said grantors from the said Thomas Blanchard for the payment of the purchase money, or interest thereon.

By administratrix of Henry Green.

By An act, to authorise the administratrix of Henry Green, deceased, to sell the real estate of her intestate, passed, December 7, 1812, Jane Green, relict and administratrix of Henry Green, late of Jefferson county, may sell any part, or so much of the real estate of said deceased, as in her discretion may be necessary for the payment of the debts due from the estate of the said decedant, on such credit as in her opinion the situation of the estate may render necessary, but that she shall not sell any of the real estate on a shorter credit than two equal payments of six and twelve months, and as administratrix, she may give titles in fee simple to the purchasers.

By Francis Nailor's admintor.

By An act, to authorise the administrator of Francis Nailor, deceased, to sell a certain tract of land therein mentioned, passed, December 21, 1812, Daniel Burnett, administrator of Francis Nailor, late of Adams county, may sell all the right, title and claim, of which the said Francis Nailor died possessed, to a tract of land, containing one hundred and seventy acres, or thereabouts, on the north side of Bayou Pierre, adjoining James Harman's and Hamilton's lands in Claiborne county, if, in his discretion, it may be necessary for the payment of the debts due by the estate of the said decedant, on such credit as in his opinion, the situation of the estate may render necessary, but he shall not sell such land on a shorter credit than two equal payments of six and twelve months, and as administrator, he may give titles in fee simple to the purchaser; the said administrator to make such sale effectual, shall obtain from the relict of the decedant, a relinquishment of her dower, and the curtesy of her present husband, and account for the proceeds of such sale, as in case of personal property.

By Joseph Pannell's executrix.

By An act, to authorise the executors of Joseph Pannell, deceased, to sell the real estate of their testator, passed, January 17, 1814, Agnes Pannell executrix of the last will and testament of Joseph Pannell, late of Adams county, may sell all, or any part of the real estate of the said deceased, as in her discretion may be necessary for the payment of the debts due from the estate of said decedant, on such credit as in her opinion, the situation of the estate may render necessary, and give titles in fee simple to the purchaser.

By administrator of James Cane.

By An act, to authorise the administrator of James Cane, deceased, to sell the real estate of the said deceased, passed, January 22, 1814, Robert Witherspoon, the administrator of the estate of James Cane, late of the county of Franklin, may sell all, or any part of the estate of said deceased, as in his discretion, he may deem necessary for the payment of the debts due from the estate of said decedant, on a credit of three annual instalments, and give titles in fee simple to the purchasers.

By administrator of Samuel Bridgers.

By An act, to authorise the administrators of Samuel Bridgers, deceased, to sell a certain tract of land therein named, passed, January 6, 1814, the administrators of Samuel Bridgers, deceased, may sell and convey a certain tract of land, lying in the county of Claiborne, adjoining the lands of Adam Gordon and Turner B. Brashears, to which tract said Bridgers was entitled to a preemption right, and for which the administrators have since obtained a patent from the United States, for the benefit of the heirs. The administrators shall sell said land, at public sale, on at least twelve moths credit, and when collected, pay the proceeds of such sale to the heirs and guardians of the heirs of the said Samuel Bridgers, and also account to the orphans' court, as in cases of the sale of goods and chattles.

By administrator of William Gordon Foreman.

By an act, for the sale of the real estate of William Gordon Foreman, deceased, on a credit of three annual installments passed Januars 6, 1814 Joseph Foreman administrator of William Gordon Foreman, deceased, and in case of his death or removal from the administration of that estate, his successor or successors in the administration of the estate may sell the real estate of the said William Gordon Foreman, deceased, on a credit of three annual instalments to be computed from the day or days of the sale thereof, he or his successor or successors in that administration, to comply in all other respects with the provisions of the statute entitled "An act, concerning wills and testaments, the settlement of intestates estates, and the duty of executors, administrators and guardians."

By William King's executors.

By An act, to authorise the executor of William King, deceased, late of Virginia, to sell the real estate of his testator, passed December 27, 1814, the executor of William King, deceased, late of the state of Virginia, may sell the real estate of the said William King, lying within this territory, on a credit of one and two years, the purchaser giving bond and security for the payment of the purchase money; the said executor shall give forty days notice of the time and place of the sale, in one of the newspapers in this territory.

By administrators of Richard King.

By An act, to authorise the administrators of Richard King deceased, to sell the real and personal estate of said deceased, passed December 19, 1815, the administrators of the late Richard King of Adams county, deceased, may sell real and personal estate of the deceased, sufficient to satisfy the debts due by said deceased (by advertising the property to be sold, at least thirty days previous to the sale thereof, in some newspaper printed in the city of Natchez; and also in three of the most public places in said county) on a credit of not less than six months, nor exceeding two years, the purchaser giving bond and security to be approved of by the said administrators. The orphans' court shall settle with the administrators agreeably to the provisions of this act.

By executor of Alexander Murray.

By An act, to empower the executor of the last will and testament of Alexander Murray, deceased, to sell real estate, passed December 20, 1815, the executor of the last will and testament of lieutenant Alexander Murray, late of Adams county, may sell the real estate of the deceased, lying in the city of Natchez, in said county, and in the town of Woodville in Wilkinson county, by giving thirty days notice of the time and place of sale in a newspaper published in the city of Natchez, and on a credit of six months: and the said executor shall require of the purchaser or purchasers of said estate, bond and security, to be approved of by said executor, for the purchase money; and the proceeds of the sale shall be distributed as by law is directed of personal estate, and according to the provisions of said will.

By administrators of Tobias Brashears.

By An act, to authorise the administrators of Tobias Brashears to sell the real estate of said deceased, passed December 23, 1815, the administrators of Tobias Brashears may sell the real estate of the said Tobias Brashears, deceased, at public sale, on a credit of not less than six months nor exceeding two years, by advertising the same in one of the newspapers printed at Natchez, thirty days previous to the sale thereof, (provided that the same shall be sold at the price, and on the terms of payment that may be agreed upon by the heirs and guardians of the heirs) and make conveyances in fee simple to the purchaser for the same, and they shall return the amount of sales to the orphans' court of their county and make distribution of the same as by law directed.

By administrator of Derick P. January.

By An act, authorising the administrator and administratrix of Derick P. January, deceased, to sell the real estate of said deceased, lying in Claiborne county, passed November 25, 1816, Philip B. Harrison and Mabella January administrator and administratrix of the late Derick P. January, may sell the real estate of the deceased, lying within Claiborne county consisting of houses and lots in the town of Gibson-Port, at public sale on a credit of not less than six months, nor more than two years, at their discretion; at least thirty days notice shall be given of such sale in one of the papers printed in Natchez, and make conveyance in fee simple to the purchaser thereof and shall make a proper return of such sale to the orphans' court of their county; previous to such sale they shall give bond and security payable to the chief justice of Jefferson county court for the time being, conditioned to vest the proceeds of such sale in such real or personal property as may, in their opinion, be of most advantage to said estate; and the property so acquired, whether real or personal, shall be distributed or divided among the legal representatives of the said deceased; and the same estate shall be vested in them therein, as by law, they now have in the property directed by this act to be sold.

By Benijah Osmun's executor.

By An act, providing for the sale of the real estate of Benijah Osmun, deceased, passed November 27, 1816, John Taylor, acting executor of the last will and testament of Benijah Osmun, may sell and convey, in fee simple, all the real estate of Benijah Osmun, at public auction, on his giving forty days notice in one or both of the newspapers published in the city of Natchez, of the time and place of sale; and so much of the purchase money as shall be necessary to pay and discharge all mortgages and *liens*, given by the said Osmun, on said real estate, shall be paid in cash, and the residue to be on a credit of one year from the day of sale, the purchaser giving a mortgage on the premises, with a bond and security for the payment thereof;—and the proceeds of said sale shall be appropriated, by the executor, agreeably to law, and the provisions of the will of the said deceased.

By administratrix of Elias Fisher.

By An act, to authorise the administratrix of Elias Fisher, deceased, to sell the real estate of said deceased, passed November 25, 1816, the administratrix of Elias Fisher, deceased, may sell the real estate of Elias Fisher, at public sale, on a credit of not less than six months, nor exceeding two years, by advertising the same in one of the newspapers printed in Natchez thirty days previous to the sale thereof and make conveyances, in fee simple, to the purchaser thereof, and said administratrix shall return the amount of sales to the orphans' court of Claiborne county: She shall, previous to the sale, give bond and security payable to the chief justice of the orphans' court of the county of Claiborne and his successors in office, conditioned, to vest the proceeds of such sale in such real or personal property as may in her opinion be of the most advantage to the said estate—and the property so acquired, whether real or personal, shall be distributed or divided among the legal representatives of said deceased, and the same estate shall be vested to them therein as by law they now have in the property directed by this act to be sold.

By the Guardian of Wm. Thompson.

By An act, to authorise Shem Thompson, guardian to William Thompson to sell the real estate of his ward, passed December 10, 1816, the guardian of William Thompson late of Claiborne county, deceased, may sell the real estate of his ward, at public sale on a credit of one or two years, by advertising the same in one of the newspapers printed in Natchez, thirty days previous to the sale thereof, and make conveyance, in fee simple to the purchaser for the same, and the said guardian shall return the amount of sales to the orphans' court of Claiborne county.

By James Darrach's executors.

An act, providing for the sale of the real estate of James Darrach, deceased, passed January 19, 1818, authorises Eliza B. Darrach relict and executrix of the last will and testament of James Darrach deceased and Thomas B. Darrach and Thomas Bedford junior, executors of said will, to sell an undivided half of a house and lot in the town of Port-Gibson in Claiborne county, purchased by John Hankinson and company, for the use of their store and mercantile business, one half of which, vested by descent in William Darrach, Samuel F. Darrach, James Darrach, Charlotte Darrach, and Mary Darrach, minors, and heirs of the said James Darrach, deceased, on such terms as said executrix and executors may deem most conducive to the interest of said estate and minor heirs, and give complete titles to the purchaser. The said executrix and executors shall enter into bond and security, to be approved of by the orphans' court of said county of Claiborne, payable to the chief justice of said court, in such sum as said court shall prescribe, conditioned, that they will observe the directions and rules of the law for the sale of real estate by executors, and that they will, well and truly account for the proceeds of said sale, and that the proceeds shall be disposed of agreeably to the rules of law.

Sale of estate by Nancy Carrill.

By An act, for the relief of Nancy Carrill, Thomas Carrill, Manoria Carrill, Charity Carrill, Eliza Ann Carrill and Polly T. Carrill, the widow and heirs of William Carrill, deceased, passed, February 12, 1819, Nancy Carrill may sell at private sale or public auction, all that tract of land lying in Adams county, on the pine ridge, about eleven miles from the city of Natchez, containing, as is supposed, about two hundred and five acres, being the same tract of land of which William Carrill, deceased, was, in his life time, seized and possessed, and in which the said Nancy is entitled to dower, and which Thomas, Manoria, Charity, Elizabeth, and Polly T. Carrill claim, as heirs of said William Carrill; and the said sale shall be upon a credit of one and two years; the purchasers giving bond and security to be approved by the said Nancy for the payment of the purchase money, and also a mortgage on the premises for the greater security of the said debt. The said Nancy Carrill may convey by deed the said tract of land to the purchaser and all the right or claim which the said William Carrill, at the time of his death, had in and to the same or any part thereof. Before selling said land by virtue of this act, she shall execute a bond in the office of the clerk of the orphans' court for the county of Adams, with security to be approved of by the chief justice of said orphans' court in the penalty of twenty five hundred dollars and to the said chief justice and his successors in office, conditioned that she shall well and truly account to the said heirs, as they, respectively, shall arrive at the age of twenty one years, for their respective shares of the purchase money for which said land may be sold; and no conveyance or sale of said tract of land or any part thereof, shall be binding on said heirs until such bond and security be given.

Sale of estate by John Poor Smith, a minor.

By An act, for the relief of John P. Smith, passed, February 12, 1819, the said John Poor Smith may alien, sell and convey all that portion of land lying in the county of Jefferson, devised to him by his father John Smith, and make and deliver sufficient title thereto in fee simple or otherwise, to any person purchasing the same, notwithstanding said John Poor Smith shall not have attained the age of twenty one years.

By the Guardian of Samuel and Bridgers Sojourner.

An act, to provide for the sale of the real estate of the minor heirs of Gabriel Sojourner, passed, February 6, 1819, authorises Gabriel Sojourner, father and guardian of Samuel Sojourner, and Bridgers Sojourner, minors, to sell two tracts of land in the county of Franklin, purchased and transferred by the said Gabriel Sojourner to the said minors on such terms as he may deem conducive to the interest of said minors, and give complete titles to the purchaser:—The said father and guardian entering into bond with security to be approved of by the orphans' court of Franklin county, payable to the chief justice of said court in such sum as the said court shall prescribe, conditioned that he will observe the rules of the law for the sale of real estate by guardians and that he will well and truly account for the proceeds of said sale and that the said proceeds shall be disposed of agreeably to the rules of law.

By the administratrix of John Wall.

By An act, to authorise the administratrix of John Wall, late of Wilkinson county, deceased, to sell and convey a part of the real estate of the said deceased, passed, February 17, 1819, Sarah Wall, relict and administratrix of said John Wall, may sell one tract of land above and near Fort Adams, in said county, containing about seven hundred acres, known by the name of the Berryhill plantation, and one other tract of swamp land on or near Buffaloe creek, in said county, containing about four hundred acres, or any part of either, or both, of said tracts, as she may think will most conduce to the interest of the heirs of the said deceased, at such time, or times, and on such terms as she may think will best promote the interest of the heirs, and give complete titles to the purchaser or purchasers:—The administratrix giving bond and security to be approved of by the orphans' court of Wilkinson county, or the chief justice thereof, payable to the said chief justice and his successors in office, in such sum as the said court or chief justice shall prescribe, conditioned that she will observe the rules of law for the sale of real estate by administrators, and that she will well and truly account for the proceeds of said sale, and that the said proceeds shall be disposed of agreeably to the rules of law.

By the executors of Robert Taylor.

By An act, to authorise the executors of the last will and testament of Robert Taylor, deceased, to sell real estate, passed January 24, 1820, John M'Caleb, John Pipes, and Isaac Taylor, executors of the last will and testament of Robert Taylor, deceased, may sell the real estate of their testator, agreeably to the direction contained in said will, and give complete titles to the purchaser: said executors shall, previous to selling the said land, give bond with sufficient security, payable to the chief justice of the orphans' court of Adams county, in such sum as said court shall prescribe, conditioned that they will observe the rules of the law, for the sale of real estate by executors, and that they will well and truly account for the proceeds of said sale, and dispose of the same agreeably to law.

By administratrix of Robert B. Moore.

By An act, to authorise the administratrix of Robert B. Moore, deceased, to sell and convey a fractional section of land, situate on Pearl river, in Marion county, passed, February 3, 1820, Barbara W. Moore, relict and administratrix of Robert B. Moore, deceased, and guardian for all the minor heirs of said deceased, may sell one fractional section of land, number fifteen of township two, in range eighteen, east side of Pearl river, and west of the basis meridian, belonging to the estate of said deceased, as she may think will most conduce to the interest of the heirs of said deceased, at such time and on such terms as she may think will most promote the interest of the heirs, and give complete titles to the purchaser. The administratrix giving bond and security, to be approved of by the orphans' court, or the chief justice thereof, payable to the said chief justice, and his successors in office, in such sum as the said court or chief justice may deem sufficient; conditioned that she will observe the rules of law, for the sale of real estate by administrators, and that she will well and truly account for the proceeds of said sale, and the said proceeds shall be disposed of agreeably to the rules of law.

Sale of land certificate by Ann Lewis.

By An act, to authorise Ann Lewis, to sell the certificate for one quarter section of land in Covington county, passed, February 10, 1820, the orphans' court of Covington county may grant Ann Lewis, administratrix of Elisha Lewis, deceased, an order to sell, under such rules as the said orphans' court shall think most proper for the benefit of the heirs of said deceased, the certificate for the south east quarter section, number thirty one, in township number eight, of range number seventeen west, and assign the said certificate to the purchaser.

Sale of estate by Eliphalet Frazer's executors, &c.

By An act, providing for the sale of the real and personal estate of Eliphalet Frazer, deceased, passed February 12, 1820, Betsy Frazer, widow of Eliphalet Frazer, deceased, and Daniel Vertner and Abram Barnes, executors of the last will and testament of said deceased, on entering into bond and security, to be approved of by the orphans' court of Claiborne county, payable to the chief justice of said court, in such sum as said court may prescribe, conditioned that they will well and truly account to said court, for the proceeds of such sale, according to law, may sell the real and personal estate of said deceased, on such terms as they may think conducive to the interest of said estate, and make sufficient titles in fee simple or otherwise, saving the rights of mortgages and creditors.

By the guardian of the minor children of John Griffin.

By An act, to provide for the sale of real estate of John Griffin, deceased, passed January 31, 1821, Francis Griffin, the guardian to the minor children of John Griffin, deceased, on entering into bond and security, to be approved by the orphans' court of Warren county, payable to the chief justice of said court, and his successors in office, in such sum as said court may prescribe; conditioned that he will well and truly account to said court for the proceeds of such sale according to law, may sell twenty acres of land adjoining the town of Warrenton, or so much thereof as said minor heirs have a title in, on such terms as he may conceive most conducive to the interest of the aforesaid children; and make sufficient titles in fee simple or otherwise, saving the right of mortgage and conditions.

By the administratrix of Samuel Ross.

By An act, to enable Mary Ann Ross to dispose of certain real estate therein named, passed January 31, 1821, Mary Ann Ross, administratrix of the estate of Samuel Ross, deceased, on entering into bond and security to be approved of by the orphans' court of Adams county, payable to the chief justice of said court, in such sum as the said court shall direct; conditioned that she will observe the rules of law for the sale of real estate, may sell one quarter section of land belonging to said estate, lying within the county of Wilkinson, on such terms as she may deem most conducive to the interest of said estate and the minor heirs, and make complete titles to the purchaser.

By Daniel Morgan's executors.

By An act, to authorise the executors of the last will and testament of Daniel Morgan, late of Pike county, deceased, to sell real estate, passed February 9, 1821, David Morgan and Benjamin Morgan, executors of the last will and testament of Daniel Morgan, deceased, on entering into bond and security, to be approved of by the orphans' court of the county of Pike, payable to the chief justice of said court and his successors in office, in such sum as said court or chief justice shall prescribe, conditioned, that they will observe the rules of the law for the sale of real estate, by executors, and that they will well and truly account for the proceeds of said sale, and that the said proceeds shall be disposed of agreeably to the rules of law, may sell the south east quarter of section fourteen, in township one, range nine, east, in the district of lands west of Pearl river, at such time and upon such credit as they may think will most conduce to the interest of the heirs of said deceased, and transfer the certificate of the same to the purchaser.

By George H. Savage's administrator.

By An act, authorising the administrators of George H. Savage, deceased, to sell his real estate, and for other purposes, passed, February 10, 1821, the administrators of George H. Savage, deceased, may sell all the real estate of which the said intestate died seized, in Pike county, under such rules as the county court of Pike county shall prescribe, and execute titles in fee simple, to the purchaser.

By John Middleton's administrator.

The administrator of the estate of John Middleton, deceased, may sell the real estate of said estate, or so much thereof, as will satisfy the debts of said estate.

By the Guardians of Bernard, Frances Ann, snd E. A. Lintct.

By An act, entitled An act, to authorise the guardians of William Bernard Lintot, Frances Ann Lintot and E. A. Lintot, minor heirs of William Lintot, deceased, to sell the real estate in the city of Natchez, passed February 10, 1821, George K. Nichols, Abigail G. Nichols, relict of William Lintot, deceased, K. Minor and John Minor guardians for William Bernard Lintot, Frances Ann Lintot and E. A. Lintot, minor heirs of said deceased, may sell two parcels of land in the city of Natchez, situated under the bluff, at the landing, on the river Mississippi, upon such terms as they may think most conducive to the interest of said estate, and make sufficient titles in fee simple or otherwise, saving the rights of mortgages and creditors:—The said George K. Nichols, Abigail G. Nichols, K. Minor and John Minor, giving bond and security, to be approved of by the orphans' court of Adams county, payable to the chief justice of said county, in such sum as said conrt may prescribe, conditioned, that they will well and truly account to said court for the proceeds of such sale, according to law.

By administrator of John Cook.

By An act, to authorise Belfield Wren to sell and convey the certificates for three tracts of land, in Warren county, entered by John Cook, (since deceased,) passed February 7, 1821, Belfield Wren, administrator of the estate of John Cook, may sell all the right which the said John Cook had in the following tracts of land in Warren county, viz: the north east corner of section No. 12, also, the north east quarter section No 12, township No. 16, and a fractional section in township No. 16, all in the fourth range, east, at such time and on such conditions as he may think will best promote the interest of the widow and orphan of the said deceased, and transfer the certificates of said tracts of land to the purchaser or purchasers as effectually as the said John Cook could have done: said Belfield Wren, giving bond, with sufficient security, to be approved by the orphans' court or chief justice thereof, of said county of Warren, payable to the said chief justice and his successors in office, in such sum as the said court or chief justice may deem sufficient, that he observe the rules of law for the sale of real estate, by administrators, and that he will well and truly account for the proceeds of said sale, and that said proceeds shall be vested in such other property as the said administrator shall deem most for the interest of said widow and orphan jointly.

By the guardian of the minor children of Roswell Volentine.

By An act, to authorise and empower the guardian of the children of Roswell Volentine, deceased, to sell real estate, passed November 23, 1821, the guardian of the minor children of Roswell Volentine, late of Jefferson county, deceased, may sell a tract of land, containing three hundred and fifty three acres, lying in said county, in township number nine of range three east, claimed by purchase from the United States, made by said deceased, and only one payment made thereon. The said guardian shall sell said tract of land, at public sale, on thirty days notice in a newspaper printed in Port-Gibson, and in writing at the door of the court house of said county, on a credit of not less than six, nor more than twelve months, and shall assign to the purchaser the certificate of the register of the land office for the said tract of land, and shall take from the purchaser, bond with satisfactory security for the purchase money, which, when collected, shall be vested in other real or personal estate in the name of said heirs, or their legal representatives in case of their death, or the death of any of them: such guardian shall, previous to making sale of said land as aforesaid, give bond and security to the chief justice of the orphans' court of said county, and his successors in office, according to law; and shall, in all other respects be governed by the laws in relation to the guardians of minors.

Sale of land certificates by Reuben Grayson's administratrix.

By An act, to authorise Catharine Grayson to sell a certificate for a tract of land therein mentioned, passed, November 23, 1821, Catharine Grayson widow and administratrix of Reuben Grayson, late of Wayne county, may sell the right which said Reuben Grayson had to a certificate and tract of land, entered by him, in the year 1818, being the south west quarter section No. 36, township seven, range seventeen west, in the district east of Pearl river, and within this state, for which tract, only one payment has been made:—The said tract to be sold at such time, and on such conditions as the orphans' court of Wayne county, or the chief justice thereof, may prescribe; the said Catherine Grayson may assign said certificate and transfer said tract of land to the purchaser, as effectually as the said Reuben Grayson could have done. She shall, previously give bond with sufficient security to be approved of by the said court or chief justice, in such sum as said court or chief justice may deem sufficient, payable to the said chief justice and his successors in office, with condition that she observe the rules of law for the sale of real estate by executors or administrators; that she will and truly account for the proceeds of said sale, and that said proceeds shall be vested in such other property as the said administratrix shall deem most suitable for the orphan children of said deceased.

Sale of estate by the guardian of William Cord.

By An act, for the benefit of William Chord, passed, November 23, 1821, the county court of Adams county may, if they deem it proper, and for the benefit of William Chord, a minor son of Garrett Chord, of the city of Natchez, order the guar dian of said minor to sell an out lot of said William Chord, lying in said city:—Said guardian complying with the rules prescribed by law for the sale of lands of minors by their guardians.

By the guardian of the minor heirs of Sarah Robinson.

An act, to provide for the sale of the real estate of Sarah Robinson, deceased, passed November 23, 1821, Samuel Davis, guardian of the minor heirs of Sarah Robinson, deceased, is authorised to sell a tract of land whereof the said Sarah Robinson died seized, containing two hundred and seventeen arpens, on entering into bond and security to be approved by the orphans' court of Claiborne county, payable to the chief justice thereof, and his successors in office, in such sum as said court may prescribe:—conditioned that he will well and truly account to said court for the proceeds of such sale according to law; and said Samuel Davis may make a sufficient title, in fee simple or otherwise, saving the right of mortgage and conditions.

By the guardians of the infant children of Armstrong Ellis, Elijah Bland and Francis Nailor.

By An act, to authorise the guardians of the infant children of Armstrong Ellis, Elijah Bland, and Francis Nailor to sell real estate, passed November 28, 1821, the guardian or guardians of the infant children of Armstrong Ellis, deceased, late of Jefferson county, may sell, under such rules as the orphans' court of said county shall prescribe, the following tract of land, lying on the waters of Bayou Pierre, in said county, containing five hundred and twenty acres, bounded on the north by lands owned by Robert M'Cray and Walter Trimble; on the east by lands owned by Ezekiel Chambers and the heirs of William Neely, deceased; on the south, by a donation granted to John Burns; and on the west, by lands owned by Kinsman Devine and Adolphus Heath. And the guardian or guardians of the infant children of Elijah Bland, deceased, late of Port-Gibson, in Claiborne county, may sell under such rules, as the orphans' court of said county shall prescribe, three lots of land in said town of Port Gibson. The said guardians of the said infant children of the said Ellis and the said Bland may execute titles in fee simple to the purchasers of the said land. The guardian or guardians of the infant children of the said Ellis, before selling said land, shall give bond with good security, payable to the judge of the orphans' court of said county of Jefferson and his successors in office in such sum as the said judge shall direct: conditioned that the said guardian or guardians will comply with the rules prescribed by said judge for the sale of the land and that said guardian or guardians will apply the proceeds of said sale to the payment of the debts of said Ellis. The guardian or guardians of the infant children of said Bland before selling said lots shall give bond with good security, payable to the judge of the orphans' court of Claiborne county and his successors in office, in such sum as the said judge shall direct: conditioned that said guardian or guardians will apply the proceeds of said sale to the payment of the debts of said Bland, so far as is necessary, and that if any part of the proceeds remain after the payment of said debts, the same shall be vested in such property for the said heirs as the said judge shall direct. The guardian or guardians of the infant children of Francis Nailor of Adams county, deceased, may sell a tract of land, situated on the waters of Second creek, in said county, containing one hundred and sixty acres, more or less, generally known by the name of the Old Court house.

By An act, to amend the act entitled An act, to authorise the guardians of the infant children of Armstrong Ellis, Elijah Bland and Francis Nailor to sell real estate, passed, June 29, 1822, the orphans' court of Lawrence county, shall prescribe the restrictions under which the guardian of the orphan children of Francis Nailor, deceased, shall sell certain real estate of said children, mentioned in the original act.

By administrators of William Christie.

By An act, to authorise the administratrix and administrators of the estate of William Christie, deceased, to sell real estate, passed, June 29, 1822, the said administratrix and administrators may sell, under such rules as the orphans' court of Claiborne county shall prescribe, the tract of land, lying on the waters of the Big Black, in said county, containing——acres, bounded on the north by the land, lately owned by John A. Barnes, on the east by the land of Jacob Beard, on the south, by the lands of Samuel Ragsdale and Edward Ragsdale, on the west, by the lands of the United States; and they may execute a title in fee simple to the purchaser. They shall, before selling said land, give bond with sufficient security, payable to the judge of the orphans' court of said county and his successors in office, in such sum as the said judge shall direct: conditioned that they will apply the proceeds of such sale to the payment of the debts of said Christie so far as it shall be necessary, and that if any part of the said proceeds remain after the payment of the debts, the same shall be vested in such property, for the benefit of the heirs of the deceased as the said judge shall direct.

By the guardian of the infant children of Thomas Brice.

By An act, to authorise the guardian of the infant children of Thomas Brice to sell real estate, passed June 29, 1822, the guardian or guardians of the infant children of Thomas Brice, deceased, may sell and convey, under such rules as the orphans' court of Claiborne county shall prescribe, a tract of land, containing one thousand and fifty acres, being a part of what is usually called and known by the name of Lyman's Mandamus, and bounded north by lands, formerly belonging to Elihu Hall Bay, on the south by lands claimed by —— Jones, and on the east by lands formerly owned by William Carney.

By the guardian of Ann Daniel.

By An act, to authorise William Daniel guardian of Ann Daniel to sell real estate, passed June 29, 1822, the said guardian may sell a tract of land containing sixty acres, the property of said ward on his entering into bond and good security, payable to the judge of the orphans' court of Claiborne county and his successors in office, in such sum as said judge shall direct, conditioned that the proceeds arising from said sale, shall be vested in such property for the benefit of said minor as the judge shall direct.

By Henry Craig's executor.

By An act, to authorise the executor of Henry Craig, deceased, to sell real estate, passed June 30, 1822, the orphans' court of Jefferson county may order the sale of a tract of land, belonging to the heirs of Henry Craig, deceased, containing twenty-three acres, lying in said county, on the waters of Coles creek, bounded by the lands owned by Cowles Mead, Fielding Cook and John Dobbs;—said executor complying with the rules prescribed by law, for the sale of lands of minors by their guardians. The said executor may sell all the right, title and interest which the said heirs of Henry Craig, deceased, have to a certain tract of land lately occupied by Mrs. Cook their grandmother, supposed to contain between ten and fifteen acres, on the same terms, and under the rules aforesaid.

DIVORCES.

A law to divorce Elizabeth Hutchins from John Hutchins, her husband, passed October 3, 1799, divorces Elizabeth Hutchins from John Hutchins, aud entitles her to institute actions, by her next friend, against the said John Hutchins to recover the property which of right belongs to her, and which was given for advancement in marriage.

A law divorcing John Walton from his wife, passed May 20, 1800, dissolves the marriage contract between John Walton of Adams county and Nancy Walton.

An act, to divorce James Smith from his wife, Sarah Smith, passed December 3, 1801, divorces the said James Smith of Adams county from Sarah Smith.

An act, to divorce Elizabeth Whittle from her husband Richard Whittle, passed October 24, 1801, divorces Elizabeth Whittle of Adams county, from Richard Whittle. The said Richard Whittle shall have no right to any real or personal estate acquired by said Elizabeth, since the year 1787, nor to any estate real or personal, given her in marriage, neither shall any action be against the said Elizabeth Whittle, or her heirs, in either case.

An act, to divorce Jacob Earhart from Elizabeth, his wife, passed February 1, 1802, divorces the said Earheart from the bond of matrimony between him and the said Elizabeth his wife.

An act, to divorce Elizabeth Eulatia Bryan from Daniel Bryan her husband, passed January 30, 1802, divorces said Elizabeth Eulatia Bryan from the bond of matrimony between her and Daniel Bryan her husband.

An act, to divorce Garret E. Pendergrast and Mary his wife, passed December 29, 1805, dissolves the bond of matrimony between Garret E. Pendergrast and Mary his wife: *Provided*, the said Mary, within three months shall be served with a copy of this act and the proceedings of the general assembly, in the case, requiring the said Mary to appear by herself or her attorney and show cause why this act should not take effect. And on due return of the service of such notice on the said Mary being made to the clark of the supreme court of this territory, within three months after such service, the said court shall proceed to determine according to the right of the case and decree a divorce, or not, as they may think proper. If said Mary fail to appear, by herself or attorney, then such failure shall be taken *pro confesso* to the separation.

An act, for the relief of Wilhelmina Auboye, passed December 29, 1805, divorces the said Wilhelmina Auboye from the bond of matrimony between her and Joseph Auboye.

An act, to divorce Ann Breashears from Richard Breashears her husband, passed December 28, 1805, dissolves the bond of matrimony between said Ann Breashears and Richard Breashears.

An act, to divorce Anthony Miller and Jane his wife, passed July 24, 1805, divorces said Jane Miller from the bond of matrimony between her and said Anthony Miller.

An act, to divorce Rebecca Wimbish from James Wimbish her husband, passed July 24, 1805, divorces said Rebecca Wimbish from the bond of matrimony between her and said James Wimbish.

An act, to divorce James Dromgoole and Franky Dromgoole his wife, passed July 24, 1805, divorces said James Dromgoole and Franky Dromgoole from the bond of matrimony.

An act, to dissolve the bonds of matrimony existing between Sarah Edwards and Jesse Edwards her husband, passed July 24, 1805, divorces Sarah Edwards of Claiborne county from the bond of matrimony between her and said Jesse Edwards.

An act, to divorce Richard Claiborne and Ann Claiborne his wife, passed February 21, 1805, divorces Richard Claiborne and Ann Claiborne from the bond of Matrimony.

An act, to divorce Alexander Bailey from Mary Bailey his wife, passed February 21, 1805, divorces said Alexander Bailey from the bond of matrimony between him and said Mary.

An act, to divorce Eliza Welch from Samuel Welch her husband, passed March 2, 1805, divorces Eliza Welch from the bond of matrimony between her and said Samuel Welch.

An act, to divorce Henry D. Downs from Polly Wills Downs, his wife, passed March 1, 1805, divorces the said Henry D. Downs from the bond of matrimony between him and Polly Wills Downs.

An act, to divorce Esther Kilcrease from Robert Kilcrease, her husband, passed February 6, 1807, divorces Esther Kilcrease from the bond of matrimony between her and Robert Kilcrease.

An act, to divorce Jane Howard from her husband, Edward Howard, passed February 6, 1807, divorces said Jane Howard from the bond of matrimony between her and said Edward Howard.

An act, to divorce Sarah Dawson from John Dawson her husband, passed February 7, 1807, divorces Sarah Dawson from the bond of matrimony between her and said John Dawson.

An act, to divorce Helena Sandoz from her husband, Henry

Sandoz, passed February 10, 1807, divorces said Helena Sandoz from the bond of matrimony between her and Henry Sandoz.

An act, to divorce Martha Harwick from James Harwick, her husband, passed February 26, 1808, divorces said Martha Harwick from the bond of matrimony between her and said James Harwick.

An act, to divorce Ann J. Singleton from Richard Singleton, her husband, passed, March 1, 1808, divorces said Ann J. Singleton from the bond of matrimony between her and Richard Singleton.

An act, to divorce Wilford Hoggatt from Elizabeth Hoggatt, his wife, passed, March 1, 1808, divorces said Wilford Hoggatt from the bond of matrimony between him and Elizabeth Hoggatt.

An act, to divorce Eleanor Garner from Hiram Garner her husband, passed, March 1, 1808, divorces said Eleanor Garner from the bond of matrimony between her and said Hiram Garner.

An act, to divorce Joseph Quigless from Mary Quigless, his wife, passed, March 1, 1808, divorces Joseph Quigless from the bond of matrimony between him and said Mary Quigless.

An act, to divorce Robert Deen from Mary Deen, his wife, passed, March 3, 1809, divorces the said Robert Deen from the bond of matrimony between him and said Mary Deen.

An act, to divorce John Peake from Phebe Peake, his wife, passed, March 3, 1809, divorces the said John Peake from the bond of matrimony between him and said Phebe Peake.

An act, to divorce Elizabeth Cooksey from Vincent Cooksey her husband, passed, December 7, 1815, divorces Elizabeth Cooksey from the bond of matrimony between her and said Vincent Cooksey.

An act, to divorce Joseph Anderson from Susanna Anderson his wife, passed, December 7, 1815, divorces Joseph Anderson from the bond of matrimony between him and said Susanna Anderson.

By A resolution to dissolve the bonds of matrimony heretofore subsisting between John Clare and Frances Ann Clare, passed, February 12, 1819, John Clare is divorced from the bond of matrimony between him and Frances Ann Clare.

By A resolution to dissolve the bonds of matrimony heretofore subsisting between Eliza Simpkins and John Simpkins, passed, February 12, 1819, Eliza Simpkins is divorced from the bond of matrimony between her and John Simpkins.

By A resolution to dissolve the bonds of matrimony heretofore subsisting between Samuel Blackman and Mary Blackman, passed, February 12, 1819, Samuel Blackman is divorced from the bond of matrimony between him and Mary Blackman.

By A resolution affirming a decree of the superior court of Marion county, divorcing Nazareth Wallace and Sarah Wallace his wife, passed, January 28, 1819, Nazareth Wallace is divorced from the bond of matrimony between him and said Sarah Wallace.

By A resolution, affirming a decree of the superior court of Franklin county, divorcing George W. E. Chaney and Sarah Chaney his wife, George W. E. Chaney is divorced from the bond of matrimony between him and Sarah Chaney.

By A resolution, to dissolve the bonds of matrimony heretofore subsisting between Ann J. Dailey and Raymond Dailey, passed, January 28, 1819, Ann J. Dailey is divorced from the bond of matrimony between her and Raymond Dailey.

By A resolution, to dissolve the bonds of matrimony heretofore subsisting between Rebecca S. Williams and Richard Williams, passed, February 12, 1820, Rebecca S. Williams is divorced from the bond of matrimony between her and Richard Williams.

By A resolution, to dissolve the bonds of matrimony heretofore subsisting between John Calvit and Frances Calvit, passed, February 12, 1820, John Calvit is divorced from the bond of matrimony between him and Frances Calvit.

By A resolution, to dissolve the bonds of matrimony heretofore subsisting between Rhuhamah Seal and Littleton Seal, passed, February 12, 1820, Rhuhamah Seal is divorced from the bond of matrimony between her and Littleton Seal.

By A resolution, to dissolve the bonds of matrimony heretofore subsisting betwen Margaret Sea and Howell H. Sea, passed February 12, 1820, Margaret Sea is divorced from the bond of matrimony between her and Howell H. Sea.

By A resolution, to dissolve the bonds of matrimony heretofore subsisting between Elizabeth Barkley and Samuel C. Barkley, passed, February 12, 1820, Elizabeth Barkley is divorced from the bond of matrimony between her and Samuel C. Barkley.

By A resolution, to dissolve the bonds of matrimony, heretofore subsisting between Jane E. Richardson and Moses Richardson, passed, February 12, 1821, the bond of matrimony between Jane E. Richardson and Moses Richardson is dissolved.

By A resolution, to dissolve the bonds of matrimony, heretofore subsisting between William Tabor and Nancy Tabor, passed, January 22, 1821, William Tabor is divorced from the bond of matrimony between him and Nancy Tabor.

By A resolution, to dissolve the bonds of matrimony, heretofore subsisting between Sylphia Brown and Lamkin W. Brown passed, February 9, 1821, Sylphia Brown is divorced from the bond of matrimony between her and Lamkin W. Brown.

By A resolution, to dissolve the bonds of matrimony, heretofore existing between Henry Long, and Ann Mary Long, passed, February 9, 1821, the bond of matrimony between Henry Long and Ann Mary Long is dissolved.

By A resolution, to dissolve the bonds of Matrimony, heretofore subsisting between Elizabeth Littlepage and John Littlepage, passed, February 12, 1821, the bond of matrimony between Elizabeth Littlepage and John Littlepage is dissolved.

By A resolution, to dissolve the bonds of matrimony, heretofore subsisting between Comfort Dixon and William Dixon, passed, February 7, 1821, Comfort Dixon is divorced from the bond of matrimony between her and William Dixon.

An act, to sanction the decree for the divorce of Elizabeth Roach and Benjamin Roach, passed, February 5, 1821, dissolves the bond of matrimony between the said Elizabeth Roach and Benjamin Roach; and changes the name of said Elizabeth Roach to that of Elizabeth Greenfield.

By A resolution, to dissolve the bonds of matrimony, heretofore subsisting between Rebecca Nugent and Jacob Lewis Nugent, passed, February 9, 1821, Rebecca Nugent is divorced from the bond of matrimony between her and Jacob Lewis Nugent.

By A resolution, to dissolve the bonds of matrimony heretofore subsisting between John Coulter and Sally Coulter, passed, November 23, 1821, the bond of matrimony between John Coulter and Sally Coulter is dissolved.

By A resolution, to sanction the decree, dissolving the bonds of matrimony, heretofore subsisting between Nancy Davis and David Davis, passed, November 27, 1821, the bond of matrimony between said Nancy Davis and David Davis is dissolved.

An act, to sanction the decree for the divorce of Willis Lang and Emma Lang, passed, November 23, 1821, dissolves the bond of matrimony between the said Willis Lang and Emma Lang.

An act, to sanction certain decress therein mentioned, passed, November 23, 1821, dissolves the bond of matrimony between Mary Stevens and William Stevens;—also, the bond of matrimony between Hezekiah Newman and Deborah Newman.

An act, to sanction the decree for the divorce of Elizabeth Wilson and James J. Wilson, passed November 23, 1821, dissolves the bond of matrimony between Elizabeth Wilson and James J. Wilson; and changes the name of said Elizabeth Wilson to that of Elizabeth Burris.

By A resolution, to sanction the decree, dissolving the bonds of matrimony, heretofore subsisting between Eleanor Wilkinson and William Wilkinson, passed, June 25, 1822, the bond of matrimony between Eleanor Wilkinson and William Wilkinson is dissolved.

By A resolution, to dissolve the bonds of matrimony heretofore subsisting between Polly Howard and Gideon Howard, passed, June 29, 1822, Polly Howard is divorced from the bonds of matrimony between her and Gideon Howard.

An act, to dissolve the bonds of matrimony heretofore subsisting between Charles M'Coy and Milly M'Coy, his wife, pessed, June 25, 1822, dissolves the bond of matrimony between Charles M'Coy and Milly M'Coy.

NAMES CHANGED, &c.

An act, to change the name of Henry Carleton Coxe, passed, November 15, 1811; changes the name of said Henry Carleton Coxe to that of Henry Carleton.

Henry Carleton Coxe.

Sarah Irons, John Irons, Peggy Irons, Crawford Davis, Polly Davis and James Mc-Galgin Davis.

By An act, to change the names of, and legitimate certain minors therein named, passed, December 1, 1814, the names of Sarah Irons, John Irons, Peggy Irons, Crawford Davis, Polly Davis, and James M'Galgin Davis, the natural children of John Sprowl, are changed, as follows, to wit: Sarah Irons to that of Sarah Sprowl, John P. Irons to that of John P. Sprowl, Peggy Irons to that of Peggy Sprowl, Crawford Davis to that of Crawford Sprowl, Polly Davis to that of Polly Sprowl, and James M'Galgin Davis to that of James M'Galgin Sprowl: and the above mentioned minors are made the legitimate heirs of John Sprowl.

Freeman Ford Graves.

By An act, to change the name of Freeman Ford Graves, passed, January 6, 1814, the name of Freeman Ford Graves is changed to that of Freeman Ford.

John Newman, Jr.

By An act, to change the name of John Newman, junior, passed, February 6, 1818, the name of John Newman, junior, son of John and M. Newman, is changed to that of John Henry Kingsberry Newman.

James Locust.

By An act, to alter and change the name of James Locust, the great grand son of John Walley, of Green county, to that of James Walley, passed, January 29, 1819, the name of James Locust is changed to that of James Walley.

Hiram Picket.

By An act, to change the name of Hiram Picket to that of Hiram Smith Picket, passed, January 29, 1819, Hiram Picket, son of Micajah Picket, junior, of Franklin county, shall hereafter be known by the name af Hiram Smith Picket.

George, William, and Mary De La Huff.

By An act to alter the name of George, Mary and William De La Huff, passed, January 29, 1819, George De La Huff, Mary his wife, and William De La Huff his son, inhabitants of the county of Wilkinson, shall hereafter be known by the name of George Huff, Mary Huff, and William Huff.

William Murfee.

By An act, to render legitimate William Murfee, the reputed son of Pharoah Knowland, and for other purposes, passed, February 10, 1820, William Murfee, an illegitimate child, and reputed son of Pharoah Knowland, of Warren county, is declared legitimate and made a lawful heir of Pharoah Knowland, and his name is changed from that of William Murfee, to that of William Knowland.

Willliam Fitz Winthrop Sargent.

By An act, to change the name of William Fitz Winthrop Sargent, to the name of Winthrop Sargent, passed, January 22, 1821, William Fitz Winthrop Sargent, of the county of Adams, shall hereafter be known by the name of Winthrop Sargent.

Nashville Moss.

By An act, to alter the name of Nashville Moss to that of Henry Moss, passed, February 7, 1821, Nashville Moss of Adams county, shall hereafter be called and known by the name of Henry Moss.

Harrison Ivey.

By An act, to change the name of Harrison Ivey, passed, November 20, 1821, Harrison Ivey, the son of Betsy Ivey, shall hereafter be called Harrison M'Caleb.

Thomas, Mary and Dorcas Brown.

By An act, to change the names of Thomas Brown, Mary Brown and Dorcas Brown, passed, June 25, 1822, the name of

Thomas Brown is changed to that of Thomas Swearingen; of Mary Brown to that of Mary Swearingen, and of Dorcas Brown to that of Dorcas Swearingen.

Wm. Sims, jr. Catherine Lewis.

By An act, to change the name of William Sims, jr. to that of William Sims Fitler, passed, June 29, 1822, the name of William Sims, jr. is changed to William Sims Fitler; the said William Sims Fitler is held accountable for all manner of transactions done and executed under his former name. The names of the several legitimate children of said William Sims Fitler, are changed from that of Sims, to Fitler.

Hartley, legitimated.

By An act, to make Catherine Lewis Hartley a legitimate heir to William Lewis of Claiborne county, passed, February 27, 1809, Catherine Lewis Hartley, a natural child of William Lewis of Claiborne county, is legitimated and made a lawful heir to the estate of the said William Lewis.

PERSONS RELIEVED FROM CERTAIN CIVIL DISABILITIES.

Thomas Going.

An act, for the relief of Thomas Going, passed, December 15, 1814, authorises Thomas Going, a free man of colour, to give evidence in any court of the territory, and before justices of the peace, in all cases where the debt, or matter in controversy, does not exceed twenty dollars, wherein he is either plaintiff or defendant; and in all prosecutions on behalf of the territory for offences committed, or done to his person or property; and also to take all necessary oaths, to hold to bail, require security, or obtain an attachment where he is plaintiff or complainant.

Jean Baptiste Beadreaux.

By An act, for the relief of Jean Baptiste Beadreaux, passed, February 12, 1821, the disabilities imposed on persons of color, by an act, passed, February 10, 1807, (under the head of courts, section 9, page 155, Turner's Digest) are taken away from the said Jean Baptiste Beadreaux.

The children of Moses Foster.

By An act, to extend certain privileges to the children of Moses Foster of Claiborne county, passed, February 10, 1821, Alexander Foster, Elizabeth Jacobs, Peggy Jeffres, Rebecca Foster, Moses Foster, William Foster, Hugh Foster, James Foster, and Mary Foster, children of Moses Foster, by a Choctaw woman, are declared to be released from their civil disabilities, so far as to enable them to inherit real and personal property, according to law, sue and be sued, give testimony in courts of law and equity, and the males to vote at elections and serve in the militia as other citizens of the state: *Provided*, that the said Alexander, Elizabeth, Peggy, Rebecca, Moses, William, Hugh, James, and Mary, shall, as soon as they arrive at the age of twenty one years, go into the county court of Claiborne county, and there, by some proper instrument of writing, signed by each of their names, discharge themselves from all their Indian privileges, and signify their assent to the provisions of this act, the same to be attested and recorded in the books of the said office.

PERSONS EMANCIPATED.

Emancipation of Jones.

By An act, to emancipate a certain slave therein mentioned, passed, February 4, 1807, a slave named Jones, owned by John Burch of Jefferson county, is declared free: Said Jones is entitled to the privileges of a free person of colour: This act not to affect any other claim to the said Jones than that of the said John Burch.

Of Elizabeth: Also of Andrew, Elizabeth, Margaret, James, William, Adam, David, George, Alexander, John, Agnes and Susanna Barland.

An act, to authorise William Barland to manumit certain persons of color, passed, December 24, 1814, provides that William Barland of Adams county may set free from slavery, a female, named Elizabeth, and her twelve children, and the acknowledged children of him, the said William Barland, to wit: Andrew Barland, Elizabeth Barland alias Elizabeth Germain, Margaret Barland alias Margaret Henderson, James Barland, William Barland, junior, Adam Barland, David Barland, George Barland, Alexander Barland, John Barland, Agnes, alias Anna Barland and Susanna Barland, and the descendants of any of said females: provided, the said William Barland shall enter into bond to the governor of the territory, with Ferdinand L. Claiborne and John Steele, his securities, or such other persons as may be approved of by said governor, in the penal sum of ten thousand dollars, conditioned, that the said persons so manumitted and set free, shall not become chargeable to the public.

Of Belisle and Bess.

By An act, to manumit Belisle and Bess, late the property of A. Green, passed December 6, 1816, the negro man slave, Belisle, and his wife Bess, late the property of Abner Green, deceased, are set free from slavery.

Of Mary and her five children, Louisa, Rachel, Sandy, Mary Ann and Benjamin.

An act, to emancipate certain persons of color therein named, passed, December 10, 1816, emancipates a negro woman, slave, named Mary, late the wife of a free person of color, named Ben, alias Ben Vousden, of Adams county, deceased, whom the said Ben purchased of Major Stephen Minor, she being, at the time of said purchase, the wife of said Ben:—emancipates also, the five children, issue of said Ben, by said Mary, to wit: Louisa, Rachel, Sandy, Mary Ann and Benjamin; saving the right of any person, body politic or corporate, in or to said Mary and her said children.—If any person, body politic or corporate, claim title to said Mary and her said children, such person, body politic or corporate may emancipate and make free from bondage said Mary and her said children. The county court of Adams county shall bind out or order any overseer of said county to bind out the said children to such persons for such purposes and for such time not exceeding each of their full age of twenty one years, in the case of males, and eighteen in case of females, as the said court may deem proper; requiring that said children shall be taught to read, write and cypher as far as the Rule of Three, and to be treated and provided for in all respects as apprentices. That the said children shall have the surname of Vousden, and shall be entitled as heirs to the estate of said Ben, alias Ben Vousden, deceased.

Of Jerry.

By An act, confirming the emancipation of Jerry, a man of color, passed January 31, 1818, the said Jerry is emancipated and set free from slavery, in conformity to the will of Benajah Osmun, late of Adams county, deceased, bearing date May 17, 1815; saving the rights of creditors of the estate of said testator:—said Jerry shall give security agreeably to law, not to become chargeable to the public.

Emancipation of Isabella.

By An act, to emancipate Isabella, a person of color, passed, February 6, 1819, the mulatto girl named Isabella, daughter of John Baptiste Nicaisse, is emancipated and set free from slavery; saving, however, the right of creditors, and on condition that the said John Baptiste Nicaisse, enter into bond with security, to be approved by the county court of Hancock county, to be filed in the office of the secretary of state, and made payable to the governor for the time being and his successors in office, conditioned that the said girl, Isabella, shall not become a public charge.

Of William.

By An act, to emancipate William, a person of color, passed, February 10, 1820, the mulatto boy, named William, son of Amy, a free woman of color and the slave of William Johnson, of Adams county, is emancipated and set free from slavery; saving the rights of creditors, and on condition that said William Johnson enter into bond and security in the sum of one thousand dollars, to be filed in the office of the secretary of state, and made payable to the governor for the time being and his successors in office, conditioned that the said boy, William, shall never become a public charge, and that the said William Johnson shall educate and maintain said child until he arrive at the age of twenty one years.

Of Eleanor.

By An act, to emancipate Eleanor, a person of color, passed, February 10, 1820, the mulatto child named Eleanor, slave of Wilson B. Harper is emancipated and set free from slavery; saving the rights of creditors, and on condition that the said Wilson B. Harper enter into bond with security in the penal sum of one thousand dollars, to be approved by the county court of Adams county, to be filed in the office of the secretary of state, and made payable to the governor for the time being and his successors in office, conditioned that the said child Eleanor, shall not become a public charge, and that the said Wilson B. Harper shall educate and maintain said child until she arrive to the age of eighteen years, or until she marry, whichever may first happen.

Of Diana, Phoebe and Pompey.

By An act, confirming the emancipation of three slaves, Diana, Phoebe and Pompey, passed, February 3, 1820, the negro slaves, Diana, Phoebe and Pompey are emancipated and set free from slavery, in conformity with a codicil to the last will and testament of John Coulter, late of Wilkinson county, deceased, bearing date February 12, 1818; saving to the creditors of the estate of said testator, all their rights and claims, and provided that William Brice, John Reid, James Reid, William Reid and Jane Reid, joint heirs in part, of the late John Coulter, deceased, do enter into bond in the sum of two thousand dollars to the chief justice of the county court of Wilkinson county, and his successors in office; conditioned that the said negroes, or either of them shall not become chargeable to the public, and that the said negroes leave the state within six months from the passage of this act, never to return within the limits thereof, and also that they in the mean time keep the peace and be of good behavior.

By An act, to amend an act entitled, an act, confirming the emancipation of three slaves, Phoebe, Diana and Pompey, passed February 9, 1821, the bond with the condition thereto, executed by David Cooper, executor of the last will and testament of John Coulter, deceased, shall be deemed and taken to be as legal and valid as if the same had been executed according to the provisions of the act to which this is an amendment:—Said David Cooper is discharged from so much of the condition of his said bond as requires the said Diana, Phoebe and Pompey to depart from the state within six months after the passage of said act, and that they should never again return to the state: *Provided*, That the penalty of said bond and the other conditions attached thereto, remain as valid as if this act had never been passed. William Brice, John Reid, William Reid, James Reid and Jane Reid may enter into bond as required by the act to which this is an amendment; thereupon the said David Cooper shall be discharged from the bond heretofore executed by him: *Provided*, the bond so to be executed need not contain any condition for the removal of said negroes from the state, or for their continuance out of the same: *And provided also*, That the said David Cooper be not discharged from any breach of the conditions of his said bond, which may happen before the same is superseded as is herein provided.

Emancipation of Adele.

By An act to emancipate Adele, a person of color, passed November 20, 1821, the quarteroon girl, named Adele, of about five years of age, daughter of John Morin, deceased, and the slave of Charles Favre of Hancock county, is emancipated and set free from slavery; saving the right of creditors, and on the condition that the said Charles Favre enter into bond with security, in the penal sum of one thousand dollars, to be approved of by the county court of Hancock county, to be filed in the office of secretary of state, and made payable to the governor for the time being, and his successors in office; conditioned, that the said Adele shall not become a public charge, and that the said Charles Favre shall educate and maintain said girl until she arrive to the age of eighteen years, or until she marry, whichever may first happen.

Of Lucinda Jefferson.

By An act, to emancipate Lucinda Jefferson, passed November 24, 1821, the said girl Lucinda Jefferson is emancipated, set free from slavery and is invested with all the rights, privileges and immunities of any other free white female in this state:—It having been represented to the general assembly, that John Hopkins, Esq. of the county of Jefferson, did, some years ago, purchase the said girl as a slave, whom he then believed and still believes to be the offspring of free white parents, who had, by fraud, been made to pass as a slave: And the said John

Hopkins having represented to the general assembly, that it is his wish that the said girl be restored to her natural and civil rights.

TOLL BRIDGES

Over Bayou Pierre by Thomas Going.

By An act, to authorise Thomas Going to erect and keep a toll bridge over the south fork of Bayou Pierre at Port Gibson, passed February 6, 1819, Thomas Going has the exclusive right to build and keep a toll bridge over the south fork of Bayou Pierre, at Port Gibson; to commence at the north end of Main street and to end at some convenient point on said Thomas Going's land; the right to continue for the term of fifteen years; and when said Thomas Going shall have completed his bridge, he may demand and receive the following rates, to wit: For each waggon and team, one dollar; for each cart with oxen, seventy five cents; for each cart with horses, fifty cents; for four wheeled pleasure carriages, one dollar; for two wheeled pleasure carriages, fifty cents; for man and horse, twelve and a half cents; for each drove or led horse, six and a fourth cents; for each footman, six and a fourth cents; for each yoke of oxen, twelve and a half cents; for all stock, whether cattle, sheep or hogs, three and one eighth cents:—After the said Thomas Going shall have completed his bridge, no person shall keep a ferry or boat for the transportation of any person or property, within one mile of Port Gibson, on the Bayou Pierre; and any person keeping such boat or ferry, shall for every such offence, forfeit and pay to the said Thomas Going ten dollars, recoverable before any court having cognizance thereof:—Said Thomas Going shall not shut up or change the ford now used, nor the road from thence to where it intersects his road crossing the bridge:—Said Thomas Going shall keep his bridge in good repair, and to attend to the passage of all persons wishing to cross the same, and he shall be subject to the same rules, fines and forfeitures as the law now prescribes, regulating highways, ferries and bridges.

By An act, to amend an act, entitled, An act to authorise Thomas Going to erect and keep a toll bridge over the south fork of Bayou Pierre, at Port Gibson passed November 28, 1821, Thomas Going shall keep sufficient ferry flats or boats at all times, that in event of his bridge breaking or washing away, he shall be ready to transport persons across said creek, and on failure thereof he shall be subject to the same penalties as are prescribed for non attendance on public ferries, and for which the said Thomas Going shall receive the same fees, until altered by the county court, as are allowed by law for passing said bridge:—No person shall ride or drive his horse or horses, or oxen out of a walk in crossing said bridge, under a penalty of not less than five, nor more than ten dollars, to be recovered before any magistrate or court having competent jurisdiction:—No person shall use, moor or dispose their flat bottom or other boats in such manner that persons can transport themselves or property across said creek, within the distance of one mile from said bridge; and any person offending herein, shall pay to the said Going ten dollars, to be recovered before any justice of the peace.

By An act, to amend an act entitled An act, to amend An act, to authorise Thomas Going to erect and keep a toll bridge over the south fork of Bayou Pierre, at Port Gibson, passed, June 27, 1822, Thomas Going may remove his toll bridge from the place where it now stands, and erect it over the south fork of Bayou Pierre, at Port Gibson, at, or nearly opposite to the north end of Farmer's street:—The said Thomas Going shall have all the privileges, and be subject to the same rules which have been established by law for erecting a toll bridge at the end of Main street, Port Gibson.

Over Bollechitto by Alexander Frazer.

By An act, to authorise Alexander Frazer to erect and keep a toll bridge over the Bollechitto, in Hancock county, passed, February 3, 1820, Alexander Frazer, his heirs or assigns, have the exclusive right, to build and keep a toll bridge over Bollechitto, at the place where the road leading from the mouth of Pearl river to the line of demarkation, crosses the same; the said right to continue for the term of twenty years;—After the said Alexander Frazer shall have completed his bridge, it shall not be lawful for any person to keep a ferry or boat for the transportation of any person or property within one mile of said bridge; except the proprietors of lands on the said creek within that distance may keep a boat or boats for the transportation of their own families and property, but for no other purpose; and any person keeping such ferry or boat, contrary to the provisions of this act, shall for every such offence; forfeit and pay to the said Alexander Frazer, ten dollars, recoverable before any court having cognizance thereof:—Alexander Frazer shall keep his bridge in good repair, and attend to the passage of all persons wishing to cross the same, and he shall be subject to the same rules, fines and forfeitures, as the law now prescribes, regulating highways, ferries and bridges:—The general assembly may, at the expiration of five years from the passage of this act, and at the expiration of every five years thereafter, until this act shall expire, alter the rates of toll by increasing or diminishing the same.

By An act, passed, February 9, 1821, of the following title: An act, to amend an act, entitled "An act, to authorise Alexander Frazer to erect and keep a toll bridge over the Bollechitto, in Hancock county," passed on the third day of February 1820, Alexander Frazer may demand and receive the following rates of toll, to wit: For each waggon and team, seventy five cents; for each cart with oxen, thirty-seven and a half cents; for each cart with horses, thirty-one and a fourth cents; for each four-wheeled pleasure carriage, seventy-five cents; for each two wheeled pleasure carriage, thirty seven and a half cents; for man and horse, twelve and a half cents; for each footman, six and a fourth cents; for each yoke of oxen, twelve and a half cents; for each drove or led horse, six and a fourth cents; for all stock, whether cattle, sheep or hogs, per head, three and one eighth cents:—The general assembly, may, at any time, repeal the provisions of this act.

By an act, to authorise Jesse Lee and Daniel Yates, to erect and keep a toll bridge over the Oaktoma, in Covington county, where the seventh township line crosses the same, passed, February 10, 1821, Jesse Lee and Daniel Yates, their heirs or assigns, have the exclusive right to build and keep a toll bridge over the stream called Oaktoma, in Covington county, where the seventh township line road from Natchez to St. Stephens crosses said stream. The right to continue for the term of five years from the passage of this act and at the completion of the said bridge, the said Jesse Lee and Daniel Yates, their heirs or assigns, may demand and receive the following rates, to wit: For each waggon and team, thirty-seven and a half cents; for each cart, with oxen, eighteen and three fourth cents; for each cart, with horses, twelve and a half cents; for each four-wheeled pleasure carriage, eighteen and three-fourth cents; for each two-wheeled pleasure carriage, twelve and a half cents; for man and horse, six and a fourth cents; for each yoke of oxen, twelve and a half cents; for each drove or led horse, three cents; for all stock, be the same cattle, sheep or hogs, per head, two cents: The said Jesse Lee and Daniel Yates, their heirs or assigns, shall keep said bridge, at all times, in good repair, and attend to the passage of all persons wishing to cross the same, and on failure, in either case, shall be subjected to the fines and penalties inflicted for similar neglect, by an act, to regulate highways, ferries and bridges.

Over Oaktoma by Jesse Lee and Daniel Yates.

ACADEMIES.

By An act, to incorporate the Franklin Society, passed, January 8, 1807, Cato West, Thomas M'Guen, Thomas Fitzpatrick, John Shaw, Daniel Beasley, Charles Howell, William Snodgrass, David Snodgrass, Edward Turner, John Hopkins, Henry D. Downes, James S. Rollins, Thomas Calvit, Robert Cocks, Henry Green, Felix Hughs, Armstrong Ellis, Jacob Stampley, John Brooks, Thomas Hinds, William Thompson, and Robert M'Cray, and such other persons as now are or shall become members of the said society, are constituted a body corporate, by the name of "The Franklin Society," and by that name, they and their successors, shall be capable of sueing and being sued, pleading and being impleaded, answering and being answered, defending and being defended in all actions, suits, complaints, matters and cases whatever:—They and their successors, may have a common seal, alter the same at their pleasure, and they and their successors, by the same name, shall be capable to purchase, receive, hold and enjoy to them and their successors, any real estate in fee simple or otherwise, and personal estate for the purpose of establishing an academy at the town of Greenville or its vicinity, in Jefferson county, and for the purpose of enabling them to carry into execution, such measures as may

Frank[illegible] ciety [illegible] rated, promote the said institution: *Provided*, the clear yearly value of such real and personal estate shall not exceed twenty thousand dollars; and that they and their successors may give, grant, sell, lease, demise, and dispose of said real or personal estate,at their pleasure, and make such by-laws as they shall judge proper, for the election of their officers, for election and admission of new members of the said corporation, and the terms and manner of admission, for the better government and regulation of their officers and members, for the fixing the times and places of the meetings, and for the regulating all the affairs of said corporation: Such by-laws not to be repugnant to the constitution and the laws of the United States, and of this territory.

The trustees of the Madison academy, incorporated.

By An act, to establish an academy in the county of Claiborne, and for other purposes, passed December 5, 1809, the school on the north fork of Bayou Pierre, in the neighborhood of Port Gibson, under the direction of Henry C. Cox, is erected into an academy, to be known by the name of Madison Academy. Samuel Gibson, Thomas White, Stephen Bullock, Peter Lyon, Thomas Barnes, Ralph Regan, Waterman Crane, Allen Barnes, Daniel Burnet, Samuel Cobun, Eden Brashears, Andrew Mundell, and Hezekiah Harman are declared a body corporate by the name of the trustees of the Madison Academy, and by that name, shall be capable to receive all donations, and to recover all debts which may become the property of said academy, and to do all acts for the benefit of said academy, which are incident to bodies corporate. The first meeting of the trustees shall be at the said academy on the first Saturday in February next, when they shall proceed to elect out of their own body, a president and vice president, secretary and treasurer: The president, or in his absence, the vice president may call meetings of the trustees, by giving the members due notice thereof; the ordinary meetings of the board shall be on their own adjournment; seven members shall constitute a board to do business. In case of death, removal from the county, resignation, refusal or neglecting to act, of any of the trustees, the board may at any time appoint a successor. The trustees and their successors may engage a president, and other professors, and all other officers necessary for conducting the literary concerns of the academy, and displace and appoint others at pleasure; they shall examine the proficiency of the students, and make all laws and regulations which they shall judge necessary for the good government of said academy. And for promoting morality, virtue and learning among the students, they shall take effectual care that students of all denominations be admitted to equal advantages, and that they receive, alike fair and generous treatment during their residence thereat. The trustees may raise by way of lottery, for the benefit of said academy, a sum not exceeding two thousand dollars, on such scheme or plan as the said trustees may deem most advisable.

By An act, to empower the board of trustees of Madison academy to change its site, passed, December 1, 1814, the board of trustees of Madison Academy (a majority of the whole number agreeing) may change the site of said academy to one that may be more eligible; and such site when so fixed on, shall be the permanent site of said academy; *Provided*, it shall not be more than three miles from the town of Port Gibson, in Claiborne county.

By An act, to establish an academy in Wilkinson county, passed December 27, 1814, an academy is established in Wilkinson county, to be known by the name of Jackson Academy, to be under the superintendence of Daniel Williams, sen. James Stewart, Samuel Riley, Lovick Vintress, John Davis, Samuel Norwood, Francis Richardson, William Bryan and John Nismith, and their successors, who are constituted a body corporate, to be known by the name and style of the Board of trustees of Jackson Academy, and made capable of receiving donations for the benefit of the institution, of suing and being sued, and of doing all other acts, and shall possess all other powers incident to bodies corporate. The trustees and their successors may fill all vacancies in their board, by death, resignation, removal, or refusal to act; appoint their president and other officers, engage a principal professor and such other teachers as may be necessary for conducting the literary concerns of the academy, and remove them at pleasure; hold stated or called meetings of the board for the purpose of examining into the proficiency of the students, and make all by-laws for the government of the seminary, and the promotion of learning, virtue and morality among the students; five of said trustees shall form a quorum capable of transacting business. Said trustees shall hold their first meeting on the first Monday of January next, and at such other times thereafter as they or a majority of them think expedient. For the purpose of creating funds for the support of said institution, the trustees aforesaid, are authorised to raise a sum not exceeding one thousand dollars by lottery.

Jackson academy.

By An act, to establish an academy in Amite county, passed December 8, 1815, an academy is established in Amite county, by the name of Amite Academy, to be under the direction of James Smylie, Roger Dunn, Lewis Perkins, Thomas Torrence, James Lee, James Chandler, David Nelson, Joseph Forman, John Thompson, Thomas Waggoner, and David Winborne, and their successors, who are constituted a body corporate to be known by the name and style of the Board of trustees of the Amite Academy, and made capable of receiving donations for the benefit of the institution; of suing and being sued, and of doing all other acts, and shall possess all other powers incident to bodies corporate. The trustees may fix on a site for the said academy which shall not be more than three miles from the town of Liberty; and they and their successors may fill all vacancies in their board occasioned by death, resignation, removal, or refusal to act, appoint their president and other officers, engage a principal professor and such other teachers as may be necessary for conducting the literary concerns of the academy,

Amite academy.

and remove them at pleasure, hold stated or called meetings of the board for the purpose of examining into the proficiency of the students, and make all by-laws for the government of the seminary, and the promotion of learning and morality among the students, and any six of said trustees shall form a quorum capable of transacting business. The said trustees shall hold their first meeting on the first Monday in February next, and at such other times thereafter as they or a majority of them think expedient.

Pinkneyville academy.

By An act, to establish an academy at the town of Pinkneyville, passed December 23, 1815, an academy is established at the town of Pinkneyville, in Wilkinson county, by the name of the Pinkneyville Academy, to be under the superintendence of Richard Butler, Moses Hooke, Richard Davidson, Edward Randolph, Gerard C. Brandon, John F. Carmichael, Henry Hunter, John R. Holliday, Thomas Dawson and their successors, who are constituted a body corporate by the name and style of the Board of Trustees of the Pinkneyville academy, and made capable of receiving donations for the benefit of said academy, of suing and being sued, of doing all other acts, and exercising all other powers incident to bodies corporate. The trustees and their successors may fill all vacancies occasioned in their board, by death, resignation, removal, or refusal to act; appoint their president and secretary, engage a principal teacher and such other teachers as may be necessary for conducting the literary concerns of the academy. They may hold stated and called meetings of the board for the purpose of examining into the proficiency of the students, and make laws for the government of the institution, and promoting virtue, morality and learning among the students. The trustees shall hold their first meeting at Pinckneyville, on the first Wednesday in February next. The president, and in case of his absence, any three members shall have power to call a meeting of the board, and any five of the members shall constitute a quorum capable of transacting business.

Wilkinson academy.

By An act, to establish an academy in Wilkinson county and for other purposes, passed December 23, 1815, an academy is established in Wilkinson county, the site to be within one mile of the town of Woodville, by the name of Wilkinson Academy, to be under the superintendence of John Coulter, Abram M. Scott, Joseph Johnson, William Connel, John B. Posey, John Nugent, William Vaughan, Micajah Frazier, Robert G. Leckie, and their successors, who are constituted a body corporate, by the name and style of the Board of Trustees of Wilkinson academy, and are made capable of receiving donations for the benefit of the institution, of suing and being sued, doing all other acts, and shall possess all other powers incident to bodies corporate. The trustees and their successors, may fill all vacancies occasioned in their board, by death, resignation, removal or refusal to act, appoint their president and other officers, and engage such teachers as may be necessary for conducting the literary concerns of the academy. They may hold stated and called meetings of the board for the purpose of examining into the proficiency of the students, and make all by-laws for the government of the institution, and promoting virtue, morality and learning among the students. The president may, at any time, call a meeting of the board, and any five members shall form a quorum capable of transacting business. The trustees shall hold their first meeting at the town of Woodville on the first Saturday in February next, and at such other time as they may think expedient: and for the purpose of creating a fund for the support of said institution, the said trustees may raise a sum not exceeding one thousand dollars, by lottery, upon such scheme as they may devise.

Jacksonian library society.

A Library Society is established and incorporated at the town of Woodville in Wilkinson county, by the name and style of the Jacksonian Library Society, and made capable of receiving subscriptions and donations for the benefit of the society, of suing and being sued, doing all other acts, and shall possess all other powers incident to bodies corporate, and so soon as there are nine members belonging to said society, they or a majority of them may appoint their president and other officers, elect new members, form such constitution and make such by-laws for the regulation of their own body as they may think proper.

Beach-hill academy and Methodist meeting house

By An act, to incorporate the trustees of Beach-hill academy and Methodist meeting house, in Jefferson county, passed February 6, 1819, Isaac Dunbar, George Barnes, Isaac Scott, William W. Lloyd, and Isaac A. B. Ross are declared a body corporate by the name and style of the Trustees of Beach-hill Academy and Methodist meeting house; and made capable of raising by subscriptions or receiving by donations, any sum not exceeding ten thousand dollars for the use and benefit of said institution, of suing and being sued, of pleading and being impleaded, and of doing all other acts and exercising all other powers incident to bodies corporate. The trustees and their successors, or a majority of them, may fill all vacancies in their body, occasioned by death, resignation, removal or refusal to act; elect a president and secretary either in or out of their body, as to them shall seem most expedient. The president or any two of the members may call a meeting of the trustees whenever it may be deemed expedient; any member refusing to attend after due notice given three successive times, shall be deemed to have resigned.

Wilkinson female academy.

By An act, to incorporate the trustees of Wilkinson Female Academy of Wilkinson county, passed February 19, 1819, Duncan Stewart, John Joor, Moses Hooke, Charles Stewart, Horatio Starke and Thomas Lovelace, and their associates and successors duly appointed as is hereafter directed, are constituted a body politic, styled the Wilkinson Female Academy. All sums of money, books, charts, goods and chattels in possession of, or that are now due, by subscription, contract or otherwise, or may be hereafter subscribed, given or granted for the use of said institution, are vested in said corporation, and they may receive any gift, grant, devise or bequest of lands and tenements, goods and chattels, which are made by any person or persons, capable of making such gift, grant, devise or bequest; all which goods, chattels, lands and tenements, shall be laid out in books, charts, &c. for the benefit of said institution, agreeably to the intention of the donors. The said body politic shall be capable in law and equity to sue and be sued, plead and be impleaded, defend and be defended, before any court, in all manner of suits, actions or complaints. Said body politic may appoint a president, a secretary and treasurer, prescribe their duties, remove from office and appoint others in their place, as often as they may think fit, and appoint as many additional members as they may conceive to be right, make such by-laws as may be useful to the institution, and alter the same at pleasure. Said institution shall not, at any time, own or possess real estate, more than the value of ten thousand dollars, and personal estate, more than the value of twenty thousand dollars.

Elizabeth female academy.

By An act, to incorporate the Elizabeth Female Academy, passed February 17, 1819, an academy is established near the town of Washington, in the county of Adams, by the name of the Elizabeth Female Academy, in honor of Mrs. Elizabeth Roach, the founder thereof; to be under the superintendence of John Menefee, Daniel Rawlings, Alexander Covington, John W. Briant and Beverly R. Grayson, and their successors, who are constituted a body politic and corporate, by the name and style of The trustees of the Elizabeth Female Academy, and they and their successors are made capable of receiving and acquiring real and personal estate, either by donation or purchase, for the benefit of the institution, not exceeding one hundred thousand dollars, of suing and being sued, and of doing all other acts, and shall possess all other powers incident to bodies corporate. All vacancies that may happen in said board of trustees either by death, resignation, refusal to act, or removal from the state, shall be filled by the members of the Methodist Mississippi annual conference; provided all such vacancies may be filled by the said board of trustees, to continue until the meeting of said conference next ensuing such vacancy, or until they shall fill the same. Said trustees and their successors may appoint their president, vice president and other officers, engage such teachers as may be necessary for conducting the literary concerns of the academy, hold stated or called meetings of the board, and make all by-laws and regulations for the government of the institution, and promoting piety and virtue among the students, but no religious test or opinion shall be required by the by-laws of the institution, of the pupils admitted into said academy. The president, or in his absence, the vice president may at any time call special meetings of the board by giving to each member five days' notice of such meeting; the ordinary meetings of the board shall be held on their own adjournments. Three members shall constitute a quorum to do business; the president, or in his absence, the vice president shall preside, or in case of the absence of both, any member chosen by a majority of the members present, shall preside.

Natchez Academy.

An act, to establish an academy in the city of Natchez, passed February 12, 1819, establishes, in the city of Natchez, an academy by the name of "Natchez Academy." Henry Postlethwaite, John Henderson, John Hankinson, James Foster, Elijah Smith, Daniel D. Elliott, Charles B. Green, James Metcalfe, Edward Turner, John Hosmer, Henry Huntingdon, Lyman Harding, Jonathan Thompson, and William Bullitt are created a body politic and corporate by the name of the "President and trustees of Natchez Academy;" and they and their successors duly elected members of said corporation, shall remain a body politic and corporate by that name forever, and shall be capable of suing and being sued, pleading and being impleaded in all courts and places whatsoever; and may have a common seal. They shall, by the same name, in law, be capable of receiving, purchasing, holding and conveying any estate, real or personal for the said academy. All subscriptions, grants, donations, gifts, bequests and devises made for the use of said academy, shall vest in the said corporation. The number of trustees of said academy, shall not exceed fifteen, eight of whom shall be a quorum to do any business. Said trustees may choose, by ballot, from their own body, a president of their board, who shall hold his appointment during one year, and shall preside and keep good order at all meetings of said trustees, and in case of the death, resignation, or removal of the said president, the trustees may elect a successor. They may fill all vacancies that may happen in said corporation, by the election of successors. They may determine the time and place of their meetings, and the manner of notifying the same; make bylaws not repugnant to the constitution and laws of the United States or of this state, with reasonable penalties for the government of the institution. They may erect and keep in repair, one or more house or houses for said institution. The president and trustees shall elect from their own body, a treasurer, who shall give bond and security to the said corporation in the sum of one thousand dollars conditioned for the faithful performance of the duties of his office, and for rendering a just and true account of all moneys, securities and property coming into his possession as treasurer, as often as thereto required; all deeds, signed and delivered by the said treasurer, by order of the said president and trustees, sealed with their seal, shall, when made in their corporate name, be considered as the deed of said corporation; all moneys, securities and other property of the said president and trustees, coming into the hands of the said treasurer, together with all books in which his accounts are kept, and all papers and vouchers thereto appertaining, that may be in his hands at the expiration of his term of office shall, on demand of him, his executors and administrators, be paid over to his successors; all moneys on the treasurers bond shall be paid to the president and trustees. The president and trustees may fix a site whereon to erect the necessary buildings for said academy, and contract for the erection thereof. The said president and trustees may employ professors, tutors and necessary officers for conducting the civil and literary concerns of the academy, with such power. and under such regulations, and for such term of office as they may deem proper, and declare the salaries, emoluments and duties of officers, tutors and servants, and displace them at pleasure. They shall examine the proficiency of students, and ordain rules for promoting morality among the students; they shall take care that students of all denominations may be admitted to the equal advantages of education, and that they shall receive alike fair and generous treatment. The property belonging to said corporation shall remain free from public tax. The lots and buildings of Melling Woolley in said city, now used for the purpose of an academy, shall be free from tax so long as the same shall be used for that purpose, or the purposes of tuition. The president and trustees may raise by lottery, by such scheme as they may devise, a sum not exceeding twenty thousand dollars for the purpose of establishing and maintaining said academy.

Pearl river Academy.

By An act, to incorporate Pearl river academy in the county of Lawrence, passed February 12, 1819, an academy is established in the county of Lawrence, by the name of Pearl river Academy, and William Cooper, Sen'r. David Burney, Alexander Hall, George W. King, and Howell W. Runnels are appointed trustees. The said trustees and their successors, shall be a body politic and corporate, in deed and in name, by the style of "The trustees of the Pearl river Academy;" and by the said name shall have perpetual succession of officers and members, and a common seal, with power to alter the same at pleasure; and by the said name, may sue and be sued, plead and be impleaded, answer and be answered unto, in any court of law and equity. The corporation shall be capable in law to purchase, have, hold, receive, enjoy, possess and retain in perpetuity, or for a term of years, any lands, tenements or hereditaments, or other property, and to sell, alien, or lease the same. Said corporation may take, accept and hold forever, any charitable donations, devises or bequests of property, and apply the same to the use of the said corporation; and said corporation may raise by one or more lotteries, the sum of ten thousand dollars, to be applied to the use of the same. *Provided*, That all such purchases, donations, devises and bequests of property, or money raised by lottery shall be exclusively appropriated for the purposes of erecting and endowing the said academy upon the land donated for that purpose. The said academy shall be under the direction of five trustees, three of whom shall constitute a quorum, to be chosen and perpetuated in the manner following: The said trustees and their successors shall meet on the first Monday in May, in every year in the said academy, or at such other time or place as may be thought convenient, between the hours of nine in the forenoon, and five in the afternoon; public notice thereof being given by the secretary at least ten days before such meeting, and a majority of those who meet, shall elect by ballot, a president and such other officers as they shall deem necessary for the year ensuing; the said president and officers so chosen, shall take the following oath or affirmation before any magistrate or justice of this state, viz: I, A B, do solemnly swear, (or affirm as the case may be) that I will duly and faithfully execute the office to which I am appointed, to the best of my knowledge and ability, so help me God. And on the death, resignation, or removal out of the state or county, of any trustee, the said trustees at their next meeting, shall choose, by ballot, another trustee to fill such vacancy:—No person shall be considered duly elected, unless there be a majority of the votes of the trustees then present, in his favor. The trustees, or a majority of them, may make such by-laws as they may deem expedient for the government of themselves, as well as the said academy, and all officers and professors, or other persons by them employed in the same, which by-laws shall be binding on each of the said trustees, officers, tutors and scholars of the said academy, under the pains and penalties, and disabalities therein expressed; provided the same be not repugnant to the laws of this state.

Columbian academy.

By An act, to incorporate the Columbian academy, under the name and style of the president and trustees of the Columbian academy, passed, February 10, 1820, an academy is established in Marion county, by the name of the Columbian Academy. Benjamin Lee, George H. Nixon, Charles Stovall, James Phillips, Jr. Henry Henniger, John Lott, Sen'r. Davis Collins and Simeon Duke are created a body corporate by the name of The president and trustees of the Columbian Academy, and by that name shall be capable in law, to receive all donations and recover all debts which may become the property of said academy, and may do all acts for the benefit of said institution, which are incident to, or of right appertain to bodies corporate. The first meeting of the trustees shall be on the second Monday of March next, at the court house of Marion county, at which time and place, they or a majority of them, shall choose a president, by ballot, out of their own body, and in case a majority of them do not attend at the first appointed meeting, any three members may call a meeting of said trustees, by advertisement at the court house giving ten days notice of said meeting, at which the members present may choose a president, and thereafter the ordinary meetings of the board of trustees, shall be upon their own adjournment. The president or in his absence, a member chosen *pro tempore* as president of the meeting, and the board of trustees may fix on a site for erecting said academy. They shall also control the regulations of said institution and employ such teachers as they may deem necessary for the literary order of the academy, and the good morals of the students. The trustees herein appointed may increase their members to the number of twelve, and no more. In case of death, removal from the county, resignation or refusal to act, the board may at any of their regular meetings, appoint a successor. The lands and personal property belonging to the said academy, shall be exempt from public tax. The trustees may raise by lottery, for the benefit of said academy, the sum of two thousand dollars, on such scheme as they may deem most advisable.

Sligo academy.

By An act, to incorporate the trustees of Sligo academy, passed November 20, 1821, an academy is established in Wilkinson county; the site to be on a tract of land commonly known by the name of Sligo; to be under the direction and superintendence of John Sims, Samuel Stockett, Thomas T. Hubbard, John P. Hampton, Isham Wood, Peter Randolph, Robert M'Causlin and John B. Posey, and their successors, who are constituted a body corporate, by the name and style of The board of trustees of Sligo academy; and made capable of receiving donations for the benefit of the institution, of suing and being sued, doing all other acts, and shall possess all other powers incident to bodies corporate. The trustees and their successors may fill all vacancies occasioned in their board by death, resignation, removal or refusal to act; appoint their president or other officers, and engage such instructor or teachers as may be necessary for conducting the literary concerns of the academy; hold stated and called meetings of the board for the purpose of examining into the proficiency of the students, and make all by-laws which they may deem essential to the prosperity and successful government of the institution. The president may, at any time which he may think expedient, call a meeting of the board, and any four members shall form a quorum to do business.

LIBRARY AND DEBATING SOCIETIES.

Library society of Green county.

By An act, to appoint trustees, and to incorporate a Library Society in Green county, to be known and styled "The Trustees of the Library Society of Green county," passed January 7, 1818, Josiah Skinner, John M'Rea, Elisha Morgan, Laughlin M'Kay, Peter M'Caskill, Asa Hartfield and William S. Bird are created and incorporated a body politic, to be styled "The trustees of the Library Society of Green county;" and in their said capacity, they shall have, use and exercise all powers incident to bodies corporate. The said trustees and their successors in office shall be capable of receiving subscriptions and donations for the benefit of said society; and as soon as a majority of the said trustees may convene, they may form such a constitution, make such by-laws for the regulation of their own body, and prescribe such method for the election of such officers, and for supplying any vacancies which may occur in the said board of trustees, as a majority of them may deem expedient, not inconsistent, however, with the constitution and laws of the state.

Mississippi Literary and Library company of Port Gibson.

By An act, to incorporate the Mississippi Literary and Library Company of Gibson Port, passed January 13, 1818, George W. Humphreys, Daniel Vertner, Israel Loring, Abram K. Shaifer, Joseph Moore, J. G. Clarke, Amos Whiting, Oran Faulk, S. D. Carson, D. G. Humphreys, James A. Maxwell, David Downing, John Murdock, junior, and their associates and successors, duly appointed, are constituted a corporation and body politic, to have continuance by the name and style of the "Mississippi Literary and Library Company of Gibson Port." All sums of money, books, goods and chattels in possession of, or that are now due, by subscription, contract or otherwise, or may be hereafter subscribed, given or granted for the use of said company, are vested in said corporation; and they may receive any gift, grant, devise, or bequest of lands and tenements, goods, chattels or money, which are made by any person or persons, capable of making such gift, grant, devise or bequest, all which sums of money, to be laid out in books, charts, &c. for the benefit of said corporation, agreeably to the intention of the donors. The corporation, by the name and style aforesaid, shall be capable to sue and be sued, plead and be impleaded, defend and be defended, before any court in all manner of suits, actions or complaints. Said corporation may use a common seal, and the same break and renew at pleasure, appoint a president and directors, a librarian, secretary and treasurer; prescribe and designate their duties, and fix their compensation; remove from office and appoint others in their place, as often as they think fit; make such by-laws as may be useful to the institution; fix the price of new shares and annual contributions; fill any vacancy that may happen in their number between the annual meetings; levy and collect fines and forfeitures, and transact all business appertaining to said corporation, agreeably to the by-laws thereof, during their continuance in office; provided that not less than five of the directors shall be a quorum to do business, and the by-laws shall not be repugnant to the laws of this state, or the laws of the United States. There shall be an annual meeting of the members of said company at the Library, or other suitable place as the president and directors may direct, of which the president and directors shall give at least thirty days notice, by advertisement at three or more of the most public places in the neighborhood of the Library, at which time and place, the members or such of them as are present, either personally or by proxy, evidenced by the hand writing of the shareholder, shall elect, by ballot, a president and twelve directors, out of their number, to serve one year, next ensuing their election, and until others shall be elected, and consent to serve; a majority of the shareholders, either personally or by proxy, shall be necessary to elect the president and directors; and each shareholder shall be entitled to one vote for each share he holds, and no person shall vote who is in arrears to said institution, either by fine, forfeiture or contribution. The election for the president and directors shall be held on the first Monday of January in each year; and in case a majority of the members should not appear, to choose a president and directors, at the time appointed, the election shall be held thereafter, as the attendance of a majority can be obtained for that purpose, previous notice being given as aforesaid. Each shareholder may transfer or relinquish his share or shares, after paying all arrears, and shall be forever thereafter, released from all contributions on account thereof. Said company shall not at any time, own or possess real estate, more than the value of ten thousand dollars, and personal estate, more than the value of twenty thousand dollars.

Franklin debating and literary society, Wilkinson county.

By An act, to incorporate a society to be known by the name and style of the Franklin Debating and Literary Society, in Wilkinson county, passed January 29, 1819, Duncan Stewart, Henry Hanna, William Mansfield, William Winans, Tignal J. Stewart, William J. Boatner, Ezekiel Boatner, Robert Gerald, Archibald Sellers, Zachariah Gaulden, John G. Richardson, Gabriel Berry, Ezekiel Norwood, Hugh W. Hill, George Phillips, Hiram Singleton, and Arthur Richardson, and others who now are, or may become members of the above named society, are constituted a body corporate and politic, to be styled the Franklin Debating and Literary Society, and by the same name, they and their successors shall be persons in law capable of receiving subscriptions and donations for the benefit of said society, and may form such constitution and make such by-laws for the government of the society as they may deem expedient, not inconsistent with the constitution and laws of the state. Said corporation shall be capable in law and equity to sue and be sued, plead and be impleaded, defend and be defended, before any court, in all manner of suits, actions or complaints. The said corporation may use a common seal, and they and their successors may purchase, receive, hold and enjoy to them and their successors, any real estate to the value of ten thousand dollars, and personal estate to the value of twenty thousand dollars.

Liberty debating library society.

By An act, to incorporate the "Liberty Debating Library Society," in Amite county, passed January 24, 1820, Charles Davis, Thomas Torrence, William Gardner, Daniel M'Gahey, John Lowrey, Richard Hurst, Edmond Jenkins, David Lea, John H. Corbell, S. B. Marsh, James Jones, Darling Jones, Ellis E. Spillman, Thomas Batchelor, Sill Knox, John Burton, Michael Eagan, William M'Dowell, Thomas M'Dowell, John Hall, James Lea, George Lea, Zachariah Lea, Abel Cotten, Haley Cotten, George Hamlin, N. Hamlin, Patrick Lawld, Jesse Smith, Robert Lowrey and Archibald Robertson, and others, who now are or may become members of the above mentioned society, are constituted a body corporate and politic, to be styled the "Liberty Debating Library Society," and by the same name, they and their successors shall be persons in law capable of receiving subscriptions and donations for the benefit of said society, and may form such constitution and make such by-laws for the government of the society as they may deem expedient, not repugnant to the laws and constitution of the state. Said corporation, by the name and style aforesaid, may sue and be sued, plead and be impleaded, defend and be defended, before any court, in all manner of suits, actions or complaints. The said corporation may use a common seal, and they and their successors may purchase, receive, hold and enjoy to them and their successors, any real estate to the value of ten thousand dollars, and personal estate to the value of twenty thousand dollars.

Pike library society.

By An act, to incorporate the Pike Library Society, passed February 12, 1821, David Cleveland, Early Harris, James C. Dickson, A. M. Perryman, Henry Quin, Peter Quin, junior, James Y. M'Nabb, Richardson Bowman, Elbert Burton, Benjamin Morgan, Josiah Martin, Matthew M'Ewen, Peter Felder, sen. William Dickson, James Robinson, Vincent Garner, David Dickson, Edward Gatlinand, William Love, and others who may become members of the society aforesaid, are constituted a body corporate and politic, by the name and style of the Pike Library Society, and by the same name and style, they and their successors shall be persons in law, capable of receiving donations and subscriptions for the benefit of said society, and shall have power to form such constitution, and make such by-laws for the government of the society as they may deem expedient, not repugnant to the laws and constitution of the state. Said corporation, by the name and style aforesaid, may sue and be sued, plead and be impleaded, defend and be defended, before any court, in all manner of suits, actions or complaints. The said corporation may use a common seal, and they and their successors shall be capable in law to purchase, receive, hold and enjoy, to them and their successors, any real estate to the value of five thousand dollars, and personal estate, to the value of ten thousand dollars.

MISSISSIPPI SOCIETY.

Mississippi society.

By An act, to incorporate the Mississippi Society for the acquirement and dissemination of useful Knowledge, passed November 18, 1803, Isaac Briggs, William C. C. Claiborne, William Dunbar, John Henderson, John Girault, Lewis Kerr, Joseph Briggs, David Lattimore, Joseph Macrery, Jesse Greenfield Ferdinand L. Claiborne, Benjamin Farrar, Israel E. Trask, Philander Smith, Adam Tooley, Samuel Briggs, junior, Hore Browse Trist, John Ellis and William Conner, members of said society, and such other persons as shall become members according to the constitution and laws thereof, are constituted a body corporate and politic in fact and name, by the title of "The Mississippi Society for the acquirement and dissemination of useful knowledge," and by that name, they and their successors aforesaid, shall have perpetual succession; and they shall have a common seal, which they may change at their pleasure; and by the same name, they and their successors, may purchase, take, receive, hold and enjoy, to the use of them and their successors, all manner of real estate, and the same may lease, release, sell, alien, and convey at their pleasure; and all manner of personal estate in like manner, may purchase, receive and enjoy, and sell or otherwise dispose of, and they and their successors shall be persons capable and liable in law of suing and being sued, pleading and being impleaded, in all manner of actions, suits and controversies, in law, equity or otherwise, as far as corporations, from their nature may be so capable and liable; according to the usual course of law. Said society shall be, in all things, governed by such constitutions and by-laws as may have already been, or shall hereafter be made for that purpose, by said society; *Provided* such constitutions and by-laws be not repugnant to the constitution of the United States, or the ordinance or laws of this territory, or of such state as may hereafter be erected, wherein the said society shall be.

AMITE UNION SOCIETY.

Amite Union society.

By An act, to incorporate the Amite Union Society for the acquisition and dissemination of useful knowledge, passed February 1, 1820, Aaron Butler, John M. Clark, David Day, B. B. Day, William Clark, Duncan Wilkinson, Jabez Butler, Eli Mercer, James F. Anderson, Isaiah Cain, C. Martin, Henry Swearingen, Noble Johnson, George P. Butler, Isaac H. Wright, Wright Seal, and others, who now are or may become members of the above named society are constituted a body corporate and politic, to be styled the "Amite Union Society for the acquisition and dissemination of useful knowledge," and by the same name and style, they and their successors shall be capable of receiving subscriptions and donations for the benefit of said society, and may form such constitution, and make such by-laws for the government of the society as they may deem expedient, not inconsistent with the laws of the state. The said corporation, by the name and style aforesaid, shall be capable in law and equity, to sue and be sued, plead and be impleaded, defend and be defended, before any court, in all manner of suits, actions or complaints. The said corporation may use a common seal, and they and their successors may receive, hold and enjoy, to them and their successors, any real estate to the value of ten thousand dollars, and personal estate to the value of twenty thousand dollars.

RELIGIOUS AND CHARITABLE SOCIETIES.

First Presbyterian church, Natchez.

By An act, to authorise a lottery for the benefit of the first Presbyterian church, in the city of Natchez, passed December 27, 1815, the president and trustees of the first Presbyterian church in the city of Natchez, may raise by lottery a sum not exceeding five thousand dollars for the purpose of enabling the trustees to pay the contractor in full, enclose, level and improve the church lot, complete the steeple and complete whatever may yet be undone in and about said church. The trustees may collect and receive donations, and the names of donors, as well as the names of all former donors, with the amount of their donations annexed; shall be fairly inscribed in a book kept for that purpose, and shall be carefully preserved among the archives of the church.

By An act, to enable the trustees and contributors to the first

Presbyterian church in the city of Natchez, to acquire and maintain a title to the lot of land on which said church is built, passed December 13, 1816, John Steele, John Henderson, John Bisland, Jeremiah Hunt, Charles B. Green, Joseph Forman, John Hankinson, and James M'Intosh, are appointed trustees of the first Presbyterian church in the city of Natchez, and they and their successors, according to the rules of said church, may receive, in their names, as trustees, a deed of conveyance in fee simple for the lot of land on which the said church is erected; they may maintain any action against any person or persons, violating the rights which the said trustees and their successors are vested with by this act, and the deed of conveyance to the said lot of land; and the contributors to the said church, may elect and perpetuate the successors of said trustees, according to the rules of said church, in their own manner, for the purpose of securing the title to the said lot of land, and holding the same for the use of the congregation of the said church and for no other purpose whatever.

By An act, to repeal the second section of an act entitled "An act, to incorporate the president and trustees of the Roman Catholic Society," &c. as far as it relates to the first Presbyterian church in the city of Natchez, passed February 9, 1821, the contributors to the said Presbyterian church and ministry, may elect nine trustees for the management of the temporal concerns of said church, and perpetuate the successors of the said trustees by election, according to the rules of the said church, in their own manner.

Roman Catholic society, Natchez.

By An act, to incorporate the president and trustees of the Roman Catholic Society of christians in the city of Natchez and its vicinity, and for other purposes, passed February 6, 1818, Anthony Campbell, Daniel M'Graw, Peter Tiernan, Joseph Vidal, James Berthe, John Lombard, Leonard Pomet, and their successors forever, are constituted trustees for the management of the temporal concerns of said society of christians, and they and their successors, and such other persons as now are, or hereafter shall become members of said society according to the constitution, usages and customs of the Roman Catholic church as the same has been, or hereafter may be ordained by any council or general assembly of the Roman Catholic church within the United States, are constituted a body corporate, in fact and in name, by the style of the President, trustees and congregation of the Roman Catholic Society of Natchez and its vicinity; and by that name, they and their successors shall have perpetual succession. They shall have a common seal which they may alter at pleasure; by the name aforesaid, they and their successors may hold and enjoy any real or personal estate they may have already acquired, and in future, they may purchase, take, receive, hold and enjoy real and personal estate, in fee simple, for the use of said society and congregation. All subscriptions, donations, grants, gifts, bequests and devises, made, or that may be made for the use and benefit of said society and congregation, shall vest in said president and trustees by the name aforesaid, for the use and benefit of said congregation. And they may lease or release, sell, alien and convey their real and personal estate, acquired at any time by purchase or otherwise, before or after the passage of this act.* By the same name, they and their successors, shall be capable in law, of suing and being sued, pleading and being impleaded, in all manner of actions suits and controversies in law and equity or otherwise, and may do all acts and things incident to bodies corporate, in and about the temporal concerns of said society as far as corporations, from their nature, are capable according to the usual course of law. Said body corporate shall never, at any one time, hold real and personal estate to a greater amount than twenty-five thousand dollars. The temporal concerns of said society and congregation shall be governed by seven trustees or a majority of them, annually chosen, by the contributing members according to such constitution or by-laws as may be made for that purpose, within the church or usual place of worship by said society, giving at least ten days previous notice of the time and place of holding the annual election of trustees; provided such constitution or by-laws be not inconsistent with the constitution and laws of the United States, or of this state. The said trustees, on the day after their annual election, shall meet and choose, by ballot their own president, whose duty it shall be to preside and keep order at the meetings, call extra meetings and sign all official acts of the trustees. The said president and trustees shall appoint a competent person as recorder, who shall keep the common seal, the papers, deeds, writings and books relating to the congregation; he shall keep the minutes, enter the orders, acts and proceedings of the trustees and congregation in a book to be kept for that purpose, and affix the common seal, and attest, as recorder, all official acts of the president and trustees, and when required by the trustees, or a majority of them, he shall, without delay, deliver up to their order, all the property belonging to the congregation, in his care and possession, in such manner, and under such regulations as they may have previously fixed on; and every contributing member of the said congregation, shall have free access to all the papers, documeuts and books of the said congregation. No person demeaning himself decently shall ever be turned out of said church, or out of the usual place of worship of the said society and congregation, on account of any religious or political sentiments he may have expressed or entertained. Each trustee, previous to acting as such, shall take and subscribe the following oath, which shall be put on file by the recorder; I, A B, do solemnly swear (or affirm as the case may be) that I will support the constitution of the United States, and will perform the duty of a trustee of the Roman Catholic society of christians in the city of Natchez and its vicinity, without fraud or partiality, to the best of my ability, during my continuance in office, so help me God.

(*See the next succeeding act.)

All the provisions contained in this act, shall apply to the trustees of the first Presbyterian church in the city of Natchez, as far as the same may be applicable to the said Presbyterian church in the city of Natchez.*

(*See the next preceding act.)

By An act, supplemental to an act entitled, "An act, to incorporate the president and trustees of the Roman Catholic society of christians, in the city of Natchez and its vicinity, and for other purposes," passed February 12, 1821, every free white male of the age of twenty one years or upwards, who shall profess the Roman Catholic faith, contribute to the support, and enrol himself as a member of the society, on or before the day of election, at which he offers his vote, shall be entitled to one vote and no more, for trustees of the society. The trustees shall nominate three disinterested persons of the society, to preside at each election to determine the validity of the votes, to keep order and make a return of the state of the polls to the president, who shall, the same day, declare the same at the place of election. The election for trustees, shall take place annually, on the first Monday in May, at the common place of worship; polls to open at 10 o'clock, and close at four the same day. The president and trustees may lease, sell, alien and convey, any property, either real or personal, belonging to the society; provided they first give fifteen days previous notice in some public paper of the city of Natchez, for a meeting of the society, and after stating the object of the meeting, get the consent of a majority thereof. If the president, or either of the trustees, die, resign or refuse to act, the remaining trustees may fill such vacancy or vacancies until the general election.

Bethany congregation, in Amite county.

By An act, to authorise the trustees of Bethany congregation in Amite county, to hold and maintain a title to real estate, passed January 20, 1821, James Smylie, John Nesmith, Moses Gordon, Roger Dunn and John Smylie are appointed trustees of the Presbyterian congregation of Bethany, in the county of Amite, and they and their successors, according to the rules of the church to which they belong, may receive, in their names, as trustees aforesaid, a deed of conveyance, in fee simple for the lot of land, not exceeding five acres, on which the said congregation have erected their church, and the said trustees and their successors, may maintain any action against any person or persons, violating the rights with which the said trustees and their successors are vested by this act, and by the deed of conveyance to said lot of land. The contributors to said church may elect and perpetuate the successors of said trustees, according to the rules of said church, in their own manner, for the purpose of securing the title to the said lot of land and holding the same for the use of the said Presbyterian congregation of Bethany and for no other purpose.

New Providence Baptist Society in Amite county.

By An act, extending certain privileges to the New Providence Baptist Society in Amite county, passed February 12, 1821, Samuel Marsh, John Thompson, Moses Robertson, John Jenkins and Jacob Buckholts, are appointed trustees of the New Providence Baptist Society of Amite county, and by the said name, they and their successors may perpetuate their succession according to the rules of said church; may purchase, hold and enjoy real and personal estate to any amount, not exceeding ten thousand dollars, and may maintain any action against any person or persons who may violate the rights with which the said trustees are vested by this act. The Legislature may hereafter have control over the said body, so far as to repeal the same.

Roman Catholic society, Shieldsborough.

By An act, to incorporate the president and trustees of the Roman Catholic society of christians in the town of Shieldsborough and its vicinity, passed November 26, 1821, Louis Gleises, John J. Jourdan, Belon Dedeaux, Eugene Dubuisson, Ramon Lizance, John B. Lardasse and John B. Toulmi and their successors forever, are constituted trustees for the management of the temporal concerns of the Roman Catholic society of Christians in the town of Shieldsborough, and its vicinity; and they and their successors and such other persons as now are, or hereafter shall become members of the said society of christians, according to the constitution, usages or customs of the Roman Catholic church within the United States, shall be a body corporate in fact, and in name, by the style of the "President, trustees and congregation of the Roman Catholic society of Shieldsborough and its vicinity;" and by that name, they and their successors shall have perpetual succession; they shall have a common seal which they may alter at pleasure. By the name aforesaid, they and their successors may hold and enjoy any personal estate they may have already acquired, and in future may purchase, take, receive, hold and enjoy real and personal estate in fee simple, for the use and benefit of the said society and congregation. All subscriptions, donations, grants, gifts, bequests, and devises, made for the use of said society and congregation, shall vest in the said president and trustees for the use and benefit of said society and congregation. They may lease or release, sell, alien and convey their real and personal estate, acquired at any time by purchase, or otherwise: *Provided*, they first give fifteen days notice, by advertising the same at the door of the church and at two other of the most public places in the county for a meeting of the society, and after stating the object of the meeting, get the consent of a majority thereof; and by the same name, they and their successors shall be capable and liable in law, of suing and being sued, pleading and being impleaded, in all manner of actions, suits and controversies in law and equity, or otherwise; and to do all acts and things incident to bodies corporate in and about the temporal concerns of the said society as far as corporations from their nature are capable, according to the usual course of law. The said body corporate shall never at any one time, hold real and personal estate, to a greater amount than twenty-five thousand dollars. Every free white male of the age of twenty one years or upwards, who shall profess the Roman Catholic faith, contribute to the support and enrol himself as a member of the society, on or before the day of election at which he offers his vote, shall be entitled to one vote and no more, for the trustees of the society, and the trustees shall nominate three disinterested persons of the society to preside at each election, to determine the validity of the votes, to keep order and to make a return of the state of the polls to the president, who shall, the same day, declare the same at the place of election. The election for trustees shall take place annually on the first Monday in May, at the common place of worship; polls to open at ten o'clock, and close at four the same day. The said trustees, on the day after their annual election, shall meet, and by ballot, choose their own president, whose duty it shall be, to preside and keep order at the meetings, call extra meetings and sign all the official acts of the trustees. If the president or either of the trustees die, resign, or refuse to act, the remaining trustees may fill such vacancy or vacancies, until the general election. Said president and trustees shall appoint a competent person as recorder, who shall keep the common seal, the papers, deeds, writings and books relating to the congregation: he shall keep the minutes, enter the orders, acts and proceedings of the trustees and congregation in a book to be kept for that purpose; and he shall affix the common seal and attest as recorder of the congregation, all official acts of the president and trustees, and when required by the trustees, or a majority of them, he shall, without delay, deliver up to their order, all the property belonging to the congregation in his care and possession, in such manner and under such regulations as they may have fixed on. And every contributing member of the said congregation shall have free access to all the papers, documents and books of the said congregation. No person demeaning himself peaceably and decently shall ever be turned out of the said church, or out of the usual place of worship of the said society and congregation of christians, on account of any religious or political sentiments he may have expressed or entertained. Each trustee, previous to acting as such, shall take and subscribe the following oath, which shall be put in file by the recorder, in the archives of the said congregation: I, A B, do solemnly swear (or affirm, as the case may be) that I will support the constitution of the United States, and of this state, and will perform the duty of a trustee of the Roman Catholic society of christians in the town of Shieldsborough and its vicinity, without fraud or partiality, to the best of my abilities, during my continuance in office, so help me God.

Trinity church, Natchez.

By An act, to incorporate the trustees of Trinity church, in the city of Natchez, and for other purposes, passed June 25, 1822, Benjamin Farrar, Jonathan Thompson, Richard G. Ellis, Robert Moore, James C. Williams, John Minor, Joseph E. Davis, John T. Griffith, James Moore, James K. Cook, and their successors forever, are created a body corporate by the name of "The Trustees of Trinity church in the city of Natchez." The said trustees and their successors, in their corporate capacity, may purchase, take, hold and enjoy both real and personal estate, in fee simple, or otherwise, for the use and benefit of said church; all subscriptions, donations, grants, gifts, bequests and demises, made for the use and benefit of said church, shall vest in the said trustees and their successors forever, for the use and benefit of said church: and for effecting the intention of donors and grantors, the said trustees and their successors forever, may lease or release, sell, alien and convey, at pleasure, the property of said church, and shall also be capable in law of suing and being sued, pleading and being impleaded, in all manner of actions, suits and controversies, both in law and equity, wherein the said church may be interested, and to do all acts and things incident to bodies corporate, in and about the concerns of said church as far as corporations are capable, according to the usual course of law. Said body corporate shall never, at any one time, hold any real or personal estate, more than fifty thousand dollars; said body corporate shall make all such by laws as they may deem necessary for their own government and for the interest of said church, not repugnant to the laws and constitution of the United States.

First baptist church, Natchez.

By An act to incorporate the trustees of the First Baptist church in the city of Natchez, passed June 11, 1822, James Foster, John Richards, Catesby B. Minnis, John Snodgrass, and Nathaniel Perkins, and their successors forever, are constituted trustees for the management of the temporal concerns of a church, to be called "The First Baptist church in the city of Natchez," and they are constituted a body corporate, in fact and in name, by the style of "The Trustees of the First Baptist church in the city of Natchez;" and by that name, they and their successors shall have perpetual succession.—They shall have a common seal, which they may alter at their pleasure, and they and their successors may hold and enjoy any real and personal estate they have already acquired, and in future, purchase, take, receive, hold and enjoy real and personal estate in fee simple, for the use and benefit of themselves and the congregation, and all subscriptions, donations, grants, gifts, bequests and devises, made for the use and benefit of said trustees and congregation. The said trustees and their successors, may lease, or release, sell, alien and convey any estate they may at any time possess; and by the same name, they and their successors, shall be capable and liable in law, of suing and being sued, pleading and being impleaded, in all manner of suits and controversies in law and equity, or otherwise, and to do all acts and things incident to bodies corporate, in and about the temporal concerns of said congregation. Said corporation shall never, at any one time, hold real and personal estate to a greater amount than twenty thousand dollars. The temporal concerns of said society and congregation shall be governed by seven trustees or a majority of them, chosen annually by the contributing members, at such time, and according to such by-laws as may be provided for that purpose, by said corporation; and the said trustees may make such by-laws for the government of said church as they may deem necessary, not repugnant to the constitution and laws of the United States or of this state. The said trustees shall choose from their own body, a president, to preside and keep order at their meetings, and to sign all their official acts, and call extra meetings. They shall appoint a clerk of their board, to hold his office during their pleasure, who shall keep a common seal, the papers, deeds, writings and books relating to the congregation: he shall enter the orders, acts and proceedings of the trustees and congregation, and keep the minutes in a book to be kept for that purpose, and he shall affix the common seal, and attest as clerk of the board, all official acts of the trustees; and when required, shall deliver up, without delay, to the order of the trustees, all the books, papers, seal and property belonging to the congregation and trustees, in his care and possession, in such manner, and under such regulations, as they may adopt; and every contributing member of said congregation shall have free access to all the papers, books and documents of said congregation. No person demeaning himself peaceably and decently, shall ever be turned out of the usual place of worship of said society and congregation, on account of any religious or political sentiments he may have expressed, or may entertain.

Female charitable society, Natchez.

By An act, to incorporate the Female Charitable Society of Natchez, passed February 17, 1819, Mary Smith, Martha E. Terrell, Selah Henderson, Charity Snodgrass, Augusta Forman, and Ann E. F. Smith, their associates and successors are created a body politic, to be styled "The Female Charitable Society of Natchez," and in said capacity, they shall hold and exercise all powers appertaining to corporate bodies. All sums of money, all goods and chattels now in possession of said society, or that are now due by subscription or otherwise, or that may hereafter become due, are vested in said corporation, and they may receive all gifts, grants, devises of lands and tenements, moneys, goods and chattels, which are made by persons capable of making the same, and sell and transfer, or otherwise dispose of the same. The proceeds and emoluments to be expended in deeds of charity, and agreeably to the intention of the donors. The said corporation, by the name and style aforesaid, shall be capable in law to sue and be sued, plead and be impleaded, defend and be defended, before any court, in all manner of suits or actions. The said corporation may use a common seal, appoint their officers, prescribe their duties, regulate their times of meeting, and make such by-laws as they may deem most useful to their institution: *Provided*, such by-laws shall not be repugnant to the laws of the United States or of this state. The said society shall not, at any time, own or possess real estate to a greater amount than twenty thousand dollars, and personal estate more than double that sum.

GRAND LODGE.

Grand Lodge.

By An act, to incorporate the officers and members of the Grand Lodge of the state of Mississippi, and for other purposes, passed January 29, 1819. The officers for the time being and their successors in office, and the members of the Grand Lodge of the state of Mississippi, are made a body corporate, by the name and style of "The officers and members of the Grand Lodge of the state of Mississippi," and made capable in their corporate capacity of purchasing and holding, either by lease or in fee simple, any lot of ground, necessary for the erection of a Masonic Hall and other buildings appurtenant thereto; and of renting, leasing, releasing, aliening and conveying the same at pleasure; of receiving donations; of suing and being sued, pleading and being impleaded, in any court of law or equity in this state, touching any matter or thing affecting the rights or interests of the society. They may have a common seal, and change the same at pleasure, and make any bylaws for their good government, not inconsistent with the constitution and laws of the state. The aforesaid grand lodge may raise by lottery, under the superintendence of such persons as they may appoint managers, any sum not exceeding twenty-five thousand dollars, to be appropriated to the erection of a masonic hall in the city of Natchez.

NATCHEZ MECHANICAL SOCIETY.

Natchez mechanical society.

By An act, to incorporate the Natchez mechanical society, passed March 3, 1809, Walter Irvine, Timothy Terrel, Samuel Patterson, Matthew Thomas, James Bracken, Andrew Burt, John Conn, Daniel Woodward, Joshua Swaby, Francis Allder, Samuel Batchelor, William Fox, jun. W. H. Beaumont, John Shaw, William Fox, Michael Engel, Samuel D. Purviance, William T. Voss, William Whitehead, James Gormly, Philip Hill, Andrew Marschalk, Elijah Glasscock, John W. Winn, Henry M'Neill, Robert Fox, James M'Connell, Richard Sterne, Charles M'Elheny, Holam Eldridge, members of the said society and such other persons as shall become members of the same according to the constitution and by-laws thereof, are constituted a body corporate and politic in fact and name, by the style of "The Natchez Mechanic Society," and by that name they and their successors shall have perpetual succession; they shall have a common seal, which they may change at their pleasure; by the name aforesaid they and their successors shall be capable in law to purchase, take, receive, hold and enjoy to the use of them and their successors, all manner of real and personal estate, and the same to lease, release, sell, alien and convey: by the same name, they and their successors shall be capable and liable in law of suing and being sued, pleading and being impleaded, in all manner of suits, actions and controversies in law, equity or otherwise, as far as corporations, from their nature, may be capable and liable according to the usual course of law. The said society shall be governed by such constitution, by-laws and resolutions as may have already been, or shall hereafter be made for that purpose, by the said society, not repugnant to the constitution of the United States or the ordinance or laws of this territory, or of such state as may be hereafter erected.

MONTICELLO.

Election of trustees, treasurer, assessor, collector and constable.

Power and duty of the president and selectmen.

By An act, to amend An act to incorporate the town of Monticello, passed November 21, 1821, the free white male inhabitants in the town of Monticello of twenty one years and upwards, shall on the first Monday in January in each year, at the court house in said town, hold an election to commence at ten o'clock, and close at two of the same day, under the superintendance of one or more justices of the peace, and then and there elect seven trustees, freeholders in said town, a majority of whom shall constitute a quorum to transact business; also, a town treasurer, assessor, collector and constable, to serve for the term of one year; and the said trustees shall on the day next succeeding their election, meet and elect from their own body, a president who shall preside and keep order at the meeting of said trustees, and in his absence any member may be called to the chair and exercise the functions of president; and the president and selectmen of said town shall be liable in law, to sue and be sued, plead and be impleaded, defend and be defended, in all manner of suits or actions in law or equity, and also to do all acts which are incident to bodies corporate and politic. The president and selectmen may make all such by-laws for the government of said town as they may deem expedient, not repugnant to the constitution and laws of this state, and inflict penalties upon any person for the violation of any by-law not exceeding twenty-five dollars for any one offence, recoverable with costs, in the name of the president and selectmen, for the use of said town, in which action the process may be by warrant returnable forthwith, and there shall be no stay of execution after judgment, saving the right of appeal to the president and selectmen, and the said president and selectmen may subject the parent, master, mistress or guardian of a minor, apprentice, servant or slave, to any such penalty for any offence committed by such minor, apprentice or slave. All by-laws made by the president and selectmen shall be subject to repeal by the legislature. Nothing herein contained shall be construed to prevent appeals to the superior court in the same manner that is or may be prescribed by law in case of appeal from the judgment of justices of the peace. The president and selectmen may pass ordinances for regulating petty grocers, keepers of ordinaries and victualling houses, or where fruits, meats or liquors shall be sold in order to be eaten or drank within such houses in said town, and for exacting a recognizance from every such grocer or other person as aforesaid, on such penalty and with such securities as the president and selectmen shall deem reasonable, conditioned, that he or she shall not sell a less quantity than one quart of strong, spirituous or vinous liquors, nor permit any such liquors to be drank in his or her shop, out house, yard or garden, nor suffer any kind of gaming within the same, nor sell any sort of strong or spirituous liquors to any minor, apprentice, servant or slave, without permit from parent or guardian, or from master or mistress. The president and selectmen or any of them in all cases of riot, disorder or disturbance of the peace which shall come under their immediate notice, or with which they shall be made acquainted, shall endeavor to quell the same, and may arrest or cause to be arrested, all persons engaged in such riot, disorder or other disturbance of the peace, and brought before any magistrate or before the said president and selectmen who may commit to jail for a period not more than twenty four hours, and fine all such offenders in a sum not exceeding fifty, nor less than ten dollars, and shall compel them to give reasonable security for their good behaviour for twelve months thereafter; and in all cases as above described where it shall be made appear by one or more respectable witness that the said president and selectmen, or either of them, did neglect or refuse to perform the duty required of them in this act, shall, on conviction thereof before a justice, or quorum, be fined in a sum of fifty dollars, for the use of said town. Said president and selectmen may raise by tax in each year a sum not exceeding thirty-seven and a half cents on every hundred dollars' worth of such property as may be liable to taxation in said town, and the same shall be appropriated to the use of the town; and they may exempt the inhabitants or such part thereof as they may deem proper from personal labor on the streets and highways, and in lieu thereof, may lay a capitation tax not exceeding five dollars per head on such male person above twenty one years of age. The president of the selectmen shall have and exercise the same jurisdiction that is exercised by justices of the peace, and shall be commissioned by the governor agreeably to the laws of the state; and shall continue in office for the period for which he shall have been elected president. Any person conceiving himself aggrieved by the judgment of said president, shall have the right of appeal according to the laws of the state, regulating appeals from justices of the peace. If the inhabitants of said town shall fail in any year at the time prescribed by this act, to elect the selectmen of said town, it may be lawful for any one of the selectmen of said town for the year preceding, to call a meeting of the citizens of said town for the purpose of electing selectmen for the said town for that year; or if said selectman or men shall fail to call such meeting, any justice of the peace, residing within the limits of said town may do so; in either case, five days' notice shall be given by advertisement, and the selectmen so elected, shall have the powers and privileges they would have had if elected at the time prescribed by this act. In case of death, resignation or removal from town, of any of the trustees, then the citizens may elect such persons as they may think proper to fill the vacancy, at such time and place as the balance of said trustees may appoint. The president and selectmen shall meet at least once in each month for the transaction of business; and all ordinances adopted by them, shall be published in the newspaper printed in said town.

PORT GIBSON.

By An act, to incorporate the town of Port Gibson, in Claiborne county, passed February 9, 1821, the tract of country included within the following boundaries shall hereafter be designated by the name of the town of Port Gibson, to wit: assuming the centre of the public square as a regulating point, thence running in each and every direction six hundred yards, making thereby a circle of twelve hundred yards diameter. The landholders, freeholders and householders, within said town shall on the first Monday in April next, and on the same day in each succeeding year, at or near the court house in the said town, hold a meeting to commence at the hour of ten o'clock in the forenoon, and close at the hour of four o'clock in the afternoon, and then and there to elect by ballot, and a majority of votes, seven selectmen, a majority of whom shall constitute a quorum to do business; also a town treasurer, assessor and collector, to serve for one year and until others shall have been elected; and the said selectmen shall, on the day next succeeding such election in each year or as soon as may be convenient thereafter, meet and choose by ballot from among their own numbers, a president who shall, in each year, be commissioned by the governor, as a magistrate and justice of the peace for said town, to continue in office until the first Monday in April next thereafter, and until a successor shall have been elected and commissioned, who shall preside and keep order at the meetings of the said selectmen; and the said selectmen are constituted a body politic and corporate, in fact and in name, by the style of the 'President and Selectmen of the town of Port Gibson;' and by that name they and their successors shall have perpetual succession; shall have a common seal which they may alter at pleasure; and they and their successors shall be persons capable in law to purchase, take, receive, hold and enjoy to the use of them, and their successors all manner of real estate, and the same to lease, release, sell, alien or convey; and all manner of personal estate, to purchase, receive and enjoy, to sell or otherwise dispose of; and by the same name they and their successors shall be persons liable and capable in law, of suing and being sued, pleading and being impleaded, in all manner of suits or actions in either law or equity, and to do all other acts which are incident to bodies corporate. Elections shall be held by the president and selectmen, or any three of them who shall have been in office, on the last day of March annually.—Every free white male person who may have attained the age of twenty one years, and shall have been an inhabitant of the said town of Port Gibson for at least six months next preceding any town election and who shall have been assessed by the assessor, and who shall have paid a town tax on real or personal property by the authority of the ordinances of said town within the year preceding such election; and also holders of a lot or lots within said town which have been assessed and taxes paid thereon, under the authority aforesaid,

Limits of the town.

Election of selectmen, treasurer, assessor and collector.

Selectmen incorporated.

Powers.

Qualifications of electors, &c.

Taxes.

Grocers, &c.

whether the owner of such lot or lots be an inhabitant of said town or not, shall be entitled, and none others, to vote for selectmen, treasurer, assessor and collector for said town; and such alone shall be eligible to any such office, provided he shall reside in said town. In case of the death or resignation of any of the selectmen, the president shall call a meeting of the electors in said town, five days previous notice of such meeting being given in any newspaper printed in said town, who shall by ballot fill such vacancy. The said president and selectmen may raise by tax, in each year, a sum not exceeding fifty cents on every hundred dollars' worth of such property as may be liable to taxation in said town, and may appoint the necessary overseers of the streets and highways, and they may regulate the working on the same, and exempt the inhabitants of said town, or any such part thereof as they may deem proper, from personal labor on the said streets and highways and instead thereof, lay a poll tax, not exceeding five dollars per head, on each male person above twenty one years of age. The president and selectmen of said town may pass ordinances for regulating petty grocers, keepers of ordinaries, and victualling houses, or where fruits, meats or liquors shall be sold in order to be eaten or drank at houses within said town; for exacting a recognizance from every such person as aforesaid, in such penalty and with such securities as the president and selectmen shall deem reasonable, conditioned that he shall not permit any strong or spirituous liquors to be drank in his house, shop, out house, yard or garden, nor suffer any kind of gaming within the same, nor sell any sort of strong or spirituous liquors to any servant, apprentice, or slave without a permit from his or her master or mistress. The president and selectmen may restrain under such penalties as they may deem proper, free people of color from keeping tippling shops and victualling houses, and from selling spirituous liquors, and provisions of any description.

Precautions against fire.

Said president and selectmen may pass ordinances to regulate the keeping, carting and transporting gun powder, or other combustible or dangerous materials, and, the use of lights in stables, to remove or prevent the construction of any fire place, hearth or chimney, stoves, ovens, boilers, kettles or apparatus used in any house, building, manufactory or business which may be dangerous in causing or promoting fires; to appoint one or more officers, at reasonable times, to enter into and examine all dwelling houses, lots, yards and buildings, in order to discover whether any of them are in a dangerous state, and to cause such as may be dangerous to be put in a safe and secure situation; to regulate and prevent the carrying on of manufactories dangerous in causing or promoting fire; to appoint fire wards with such duties and powers as said president and selectmen shall prescribe; to compel the owners and occupants of buildings to have scuttles on the roofs of such buildings, and stairs leading to the same; to regulate the dimensions of chimneys hereafter erected, so as to admit chimney sweeps to sweep and clean the same; to require the inhabitants respectively to provide such and so many fire buckets as may be deemed necessary, and to adopt such measures for the prevention and suppression of fires as the said president and selectmen shall deem expedient; to regulate cartmen and the price of cartage and drayage; to appoint an examiner of weights and measures, and prescribe his power and duties; to regulate the running at large of swine and cattle; to regulate the assize and quality of bread and to provide for the forfeiture and seizure of bread baked contrary thereto; to regulate the market and to restrain and punish forestalling; to direct and regulate the paving or flagging of side walks and setting out shade trees by the side of the same and on the public square; to regulate and arrange with uniformity such buildings as shall be erected; and generally to make all such by-laws for the good order and government of said town as the said president and selectmen may deem expedient, not repugnant to the laws and constitution of this state or of the United States; and to inflict penalties on any person for the violation of any law, not exceeding fifty dollars for any one offence, recoverable with costs in the name of the president and selectmen of said town, for the use of said town, before the town magistrate, or any justice of the peace within said town, in which action the first process may be by warrant returnable forthwith, and there shall be no stay of execution after judgment, saving the right of appeal to the president and selectmen; and the said president and selectmen may subject the parent, master or mistress or guardian of any minor, apprentice, servant or slave to any such penalty for any offence committed by such minor, apprentice, servant or slave. All by-laws made by said president and selectmen shall be subject to repeal by the legislature; and nothing herein contained shall be construed to prevent appeals to the superior court, in the same manner that is or may be prescribed by law in cases of appeals from judgment of justices of the peace.

Levelling streets, &c.

Said president and selectmen shall cause common sewers, drains and vaults to be made in any part of said town, and direct the cutting of any street, vent, drain, sink or sewer, and the filling or levelling any vault, sink, cellar, drain or sewer, and the discontinuance, levelling or filling up of any alley within said town, as in their opinion shall most contribute to the health and convenience thereof; and the labor to be done and the expenses to be incurred in conformity with the foregoing provisions, shall be paid for in the following manner, viz: If the labor is done, or expense incurred on any of the public streets, lanes or alleys in said town, the expense shall be paid out of the fund belonging to and under the control of the said president and selectmen; and if done on lots belonging to individuals, or on private property, the same to be paid by the owner or owners, occupier or occupiers of such property. When no agreement shall exist between landlord and tenant, respecting payment of the charges to be assessed as aforesaid, the same as between such landlord and tenant shall be considered as payable by the landlord or owner of the lot, and if any money so to be assessed, be paid by any person, when by agreement or by-law, the same ought to have been paid by some other person, it shall then be lawful for the person paying, to recover the money so paid, with interest and costs, as so much money paid for the use of the person who ought to have paid the same; and the assessment aforesaid, with proof of payment, shall be conclusive evidence in such suit. If any owner or occupier of any lot in said town, shall not, within such time as the president and selectmen may direct, cause such drains, sewers or vaults to be made, as the said president and selectmen may order, or shall not clean or fill up such sewer, drain, sink, vault or cellar as the said president and selectmen may order or direct, the said president and selectmen may cause the same to be done; and if the owner or occupier of the lot on which such labor is bestowed or expense incurred, shall not, when notified of such expense, defray the same, the said president and selectmen may cause said lot, or a sufficiency thereof to be sold at public sale, on giving twenty days' notice in any newspaper published in Port Gibson, of such sale; and the expense incurred on such lot, and the sale of the same, and the residue, if any, to be paid over to the owner or owners of such lot, their heirs or assigns, and the said president and selectmen may transfer and convey to the purchaser or purchasers of such lot, all the estate, right, title and interest of the owner thereof: If the owner of the lot so sold, his heirs or assigns shall within one year, pay to the purchaser or purchasers thereof, or to the treasurer of said town, the expense incurred on said lot with interest at the rate of one hundred per cent per annum, the sale so made shall be void, and the purchaser or purchasers, their heirs or assigns shall reconvey to the owner accordingly.

Removal of damaged cotton seed, tainted provisions, &c.

Said president and selectmen may order the removal without the limits of said town, or to some other place of safety therein, of any damaged cotton seed, manure, tainted provisions, infected goods, wares or merchandise, or other matter which they may deem prejudicial to the health of the inhabitants of said town; and the owner or occupant of any lot or building on or in which such cotton seed, manure, tainted provisions, infected goods, wares or merchandise, or other commodity may be situated, refusing or neglecting to remove the same within the time directed by the said president and selectmen, shall be liable to a fine of ten dollars for each day's neglect or delay in removing the same; to be recovered before any magistrate or court having jurisdiction thereof. The said president and selectmen shall designate and lay out suitable burying grounds for said town and regulate the burying therein, and appoint a sexton to such burying grounds, and prescribe his duties and compensation. If any person be sued for any thing done in pursuance of this act, such person may plead the general issue and give this act and the special matter in evidence. This act shall be subjected to be altered, amended or repealed, as the legislature of this state may deem advisable.

PORT GIBSON FIRE COMPANY.

By An act, to incorporate a fire company in the town of Port Gibson, passed January 26, 1821, Amos Whiting, James Burbridge, Harvey Bradford, James Hughes, Orran Faulk, Tobias Gibson, Horace Carpenter, Cornelius Haring, John H. Esty, Benjamin Shields, George Lake, Alfred Faulk, A. G. Cage, William R. M'Alpine, Thomas Cotton, John L. Buck, Fielder Offutt, James Maxwell, Joseph Briggs, and David D. Downing are incorporated under the name of the Port Gibson Fire company, and they and their successors shall have perpetual succession, may have a common seal, shall have power to purchase and hold property, real and personal to the amount of ten thousand dollars, to institute and maintain suits and be capable of being sued in law, and shall have power to make all needful by-laws for their good government, so that the same be not contrary to the constitution and laws of this state, and generally to do all such acts and things as pertain to a body corporate and politic. The said company, as often as vacancies happen therein, may fill the same by elections, to be made by their own body, and elect additional members, so that the whole shall not exceed fifty at any one time. The said company or a majority of them, may associate themselves together, elect a president or presiding officer who may be necessary and proper, for the good government and orderly dispatch of the business of the said company, and may inflict fines upon delinquent members, not exceeding twenty dollars, for any breach of their by-laws or any non-conformity to their regulations. It shall be the duty of said fire company, and it is declared to be an indispensable condition of their charter of incorporation, that they use their best endeavours to preserve the said town from all danger of fire, and from all circumstances that may lead to such danger, and to this end they may at all seasonable times, keep up a patrol, to be composed of the members of said company, who, when acting shall be subject to all the laws respecting and relating to other patrols. And it is also declared as a condition of their charter, that the said company procure a fire engine for the use of said company, buckets for the conveyance of water, and all other necessary and useful engines for the extinguishment of fire.

Company incorporated.

By An act, supplemental to an act entitled An act, to incorporate a Fire Company in the town of Port Gibson, passed June 22, 1822, the members of the Port Gibson Fire Company are exempted from ordinary militia duty, but not from militia duty in times of war, insurrection or public invasion or danger.

LIBERTY.

By An act, to incorporate the town of Liberty in Amite county, passed January 20, 1819, all the free citizens of the United States, resident in the town of Liberty, or within two hundred yards of the margin of said town, are declared to be a body corporate, and the free white male citizens thereof shall meet at some convenient place in said town, and elect by ballot, between the hours of twelve and one o'clock, three persons who shall hold their appointment for one year, and be known by the name of the Town-Council of Liberty, and by that name they shall be capable of holding property, real and personal, not exceeding twenty thousand dollars, to them and their successors for the use of said corporation, and by that name, they may sue and be sued, plead and be impleaded, answer and be answered unto, in any court of law or equity in this state. The said town council shall meet within three weeks after their appointment, and as often thereafter as they may deem it necessary;—they shall appoint a president, who shall be commissioned by the governor, a justice of the peace, and all other officers; which may be required by the law of said corporation, and they may make by-laws, for the good government thereof, not contrary to the constitution and laws of the state and of the United States, and levy a tax not exceeding twelve and a half cents on every hundred dollars' worth of property, nor three dollars on each citizen for one year, to be collected quarter yearly. All elections shall be conducted in the manner that may be prescribed by the laws of said corporation. The citizens of said corporation shall be exempt from working on the public roads out of the limits of said corporation, but shall be required to work on all public roads, now laid out and existing, or hereafter to be laid out in the limits of said corporation.

Town-council

Powers and duties.

Taxes.

By An act, to amend an act, to incorporate the town of Liberty, in Amite county, and for other purposes, passed February 7, 1820, all the powers, rights and privileges in any wise vested by law, in the commissioners of the town of Liberty, in Amite county is vested in the town council of Liberty; and said commissioners, their clerk or any other officer or officers by them employed, shall deliver all papers, writings, books, maps, plots, bonds, notes or accounts, which they may hold in any way relating to the town of Liberty, to the president thereof, within three weeks after they or any of them, shall be notified by the said president, in writing, to deliver the same, under the penalty of one thousand dollars; to be recovered before any court having competent jurisdiction, in the county of Amite, to be applied to the use of the corporation; and the town council, together with the president thereof, or a majority of them, shall have the same powers to collect moneys for lots sold in the town of Liberty, and to execute titles to purchasers, as the said commissioners had by the acts, passed February 24, 1809, and December 12, 1811. The president of the town council of Liberty, shall have, possess and enjoy all the powers, privileges and immunities of a justice of the peace for the county of Amite.

HOLMESVILLE.

Election of trustees, treasurer, assessor, collector and constable.

By An act, to incorporate the town of Holmesville in Pike county, passed January 24, 1820, the town of Holmesville in Pike county, is incorporated, and the citizens of said town, may on the first Monday in March, annually, at the court house in said town, vote for five persons, inhabitants of said town, as trustees, a majority of whom shall constitute a quorum to do business; also a town treasurer, collector, assessor, and constable, to serve for the term of one year, which election shall be superintended by a justice of the peace, and a freeholder, and shall commence at ten o'clock of the forenoon, and close at three in the afternoon, of the same day. The said trustees shall be a body politic, by name and style of the trustees of the town of Holmesville, and they and their successors in office shall be capable in law of suing and being sued, of pleading and being impleaded, defending and being defended in all manner of suits and actions in either law or equity, and of doing all other acts incident to bodies corporate. A majority of said trustees, in each year, may raise such sum of money as they may deem necessary for the well regulating of said town, which sum shall be assessed upon the citizens of said town by the assessor, according to regulations, to be established by the trustees, and collected by the collector, and disposed of for the use of said town as the trustees shall direct; *Provided*, That such sum shall not exceed one half of the state tax, paid by said corporation, and in case such sum shall be insufficient for the purposes of the town government, such further tax as shall be thought expedient by two thirds of the voters in said town, shall be assessed, collected and disposed of as provided in this act. All persons entitled to vote for members of the general assembly, shall be legal voters under this act, provided they reside within the limits of said town. The said trustees shall meet on their own adjournment, and may make such by-laws in writing, as to them may appear expedient for the good government of said town, not repugnant to the laws and constitution of the state. The said trustees, in common council, may impose reasonable fines upon offenders against the by-laws of the corporation, recoverable before any justice of the peace of said town. In case of the death, removal or resignation of any trustee, the chairman of the board of trustees, shall order an election to fill such vacancy, by giving at least three days' notice at three of the most public places in said town. The limits of said town of Holmesville are confined to the purchase made by the commissioners of the county of Pike for fixing on the site for public buildings. The inhabitants of said town, subject to work on roads, shall not be compelled to perform that service over the distance of one mile from the court house in said town.

Trustees incorporated.

Powers.

WOODVILLE.

Election of commissioners.

Qualification of electors.

By An act, to establish and incorporate the town as laid out at the court house in Wilkinson county, passed December 9, 1811, the town aforesaid shall be hereafter known by the name of Woodville, and the freeholders and the householders within the town of Woodville, shall on the first Monday in January, in each year, at the court house in said town, hold an election to commence at ten o'clock in the morning and close at two o'clock in the afternoon, and elect by ballot five commissioners, a majority of whom shall constitute a quorum to do business; and said commissioners so elected, shall on the next day after such election, in every year, meet and choose by ballot, from their own body a president who shall preside and keep order in the meeting of the said commissioners, and in his absence, or incapacity to act, any other member may be called to the chair. The said commissioners are constituted a body corporate by the name of the president and commissioners of the town of Woodville, and by that name they and their successors shall be capable in law of suing and of being sued; of pleading and being impleaded, in all manner of suits and actions in either law or equity, and also to do all acts which are incident to bodies corporate. All free male inhabitants subject to taxation, who shall be in the occupancy of a room or rooms, separate and apart to himself, shall be deemed a householder, and shall be entitled to vote at the town elections. The said commissioners shall meet on their own adjournment and may make such laws in writing as to them may appear expedient for the good government of said town, not inconsistent with the laws or constitution of the United States or of this territory; they may impose reasonable fines upon all persons who shall offend against the laws made by the commissioners, and all such fines, demand and recover before any justice of the peace, or court of record, having jurisdiction of such sums. In case of death, resignation, or removal from the said town, of any of the said commissioners, the president shall call a meeting of the freeholders and householders, by advertising the same at the court house, five days before meeting, who shall by ballot, proceed to supply such vacancy. All male persons above the age of sixteen, and under the age of fifty, residing within the bounds of the said town of Woodville, shall work on the streets, and public square of the said town, in such way as may be prescribed by the said commissioners, and they are discharged from working on the roads of the county.

Limits of the town.

By An act, supplemental to an act to incorporate the town of Woodville, and for other purposes, passed February 3, 1818 the town of Woodville, in Wilkinson county, shall be bounded by the following lines: beginning at the northwest corner of the land lately belonging to John Dunkley, and running due east to intersect a line drawn along the eastern line of Thomas Kirkham's land, thence along said line to intersect a line drawn east and west along the southern boundary of the lots of A. M. Scott, John L. Lewis and others; thence along said line to intersect John Sapp's east boundary line; and thence along said line to the beginning. The president and selectmen of the town of Woodville shall procure a resurvey of said town, which shall be made by the surveyor for the county of Wilkinson, in which survey he shall lay out the public square, in manner required by the act of December 1809, giving certain commissioners power to contract for and receive title for five acres of land, to be the public square of said town;—But the surveyor shall not run into the public square, any buildings or other improvements made by individuals, on the margin of said square. The president and selectmen may make all such by-laws for the government of said town as may be deemed by them expedient, not repugnant to the constitution and laws of this state, and inflict penalties upon any person for the violation of any by-law, not exceeding twenty-five dollars for any one offence, recoverable, with costs in the name of the president and selectmen, for the use of said town, in which action the first process may be by warrant returnable forthwith, and there shall be no stay of execution after judgment, saving the right of appeal to the president and selectmen, and the said president and selectmen may subject the parent, master, mistress, or guardian, of any minor, apprentice, servant or slave;—But all by-laws, made by said president and selectmen, shall be subject to repeal by the legislature. The said president and selectmen may raise by tax, in each year, a sum not exceeding twenty-five cents on every hundred dollars' worth of such property as may be liable to taxation in said town, and the same shall be appropriated to the use of the town. The president of the selectmen shall exercise the same jurisdiction that is exercised by the justices of the peace, and shall be commissioned by the governor, agreeably to the laws of the state; provided, any person conceiving himself aggrieved by the judgment of said president, shall have the right of appeal, according to the laws of the state, regulating appeals from justices of the peace. If the inhabitants of the said town of Woodville, shall fail, in any year, at the time prescribed to elect the selectmen of said town, any one of the selectmen of said town, for the preceding year, may call a meeting of the citizens of said town, for the purpose of electing selectmen for said town for that year, or if said selectmen fail to call such meeting, any justice of the peace residing within the limits of said town, may do so: in either case, five days' notice shall be given, by advertisement, and the selectmen so elected, shall have all the powers and privileges they would have had, if they had been elected at the time prescribed by the act to which this is a supplement.

Town to be resurveyed.

Taxes.

By An act, to repeal so much of an act, as relates to Woodville, entitled an act to repeal the several acts incorporating the towns of Woodville and Winchester, and for other purposes, passed, June 29, 1822, the freeholders and householders, citizens of said town of Woodville, shall, under the several acts heretofore in force, incorporating said town, hold a meeting on the first Monday in July next, at the court house, for the purpose of nominating a justice of the peace, and two freeholders, who shall, on their giving five days' previous notice thereof, hold an election between the hours of ten o'clock in the forenoon, and two o'clock in the afternoon of said day, elect by ballot, and a majority of votes, five selectmen, who shall be freeholders, a majority of whom shall, at all times, be a quorum to do business, to serve until the first day of January next, and until successors be elected under the provisions of the before recited acts of incorporation. The president and selectmen shall elect, by ballot, a town treasurer, and assessor and collector of town taxes, also a town constable, who may serve as assessor and collector, all of whom shall give such bonds and securities, and comply with all such by-laws as the president and selectmen shall adopt; and shall hold their offices until the first Monday of January next and then for the term of one year next succeeding their election thereafter, and until they shall have been succeeded by a new appointment. The president and selectmen may appoint a clerk from their own body, who shall record, in well bound books kept for that purpose, all orders, rules, ordinances and proceedings. The town treasurer shall keep, in well bound books, kept for that purpose, a particular account of all fines, forfeitures and penalties, and also of all taxes paid into said treasury and disbursements made by said president and selectmen; and the said books shall be open at all times for the inspection of any three freeholders or householders, living within said town.

Election of treasurer, assessor and collector and constable.

Clerk.

GREENVILLE.

Election of trustees, treasurer, assessor and collector.

By An act, to incorporate the town of Greenville, in Jefferson county, passed, February 6, 1819, the town of Greenville is incorporated, and the citizens of said town, may, on the first Monday of April, annually, at the court house in said town, vote for five persons, inhabitants of said town as trustees, a majority of whom shall constitute a quorum to do business; also a town treasurer, assessor, and collector, to serve for the term of one year; said election shall be superintended by a justice of the peace, and shall commence at ten o'clock in the forenoon, and close at three o'clock in the afternoon of the same day. The said trustees shall be a body corporate and politic by the name and style of the trustees of the town of Greenville, and they and their successors shall be capable in law of suing and being sued, of pleading and being impleaded, defending and being defended, in all manner of suits and actions in either law or equity; and also to do all acts which are incident to bodies corporate and politic. A majority of said trustees in each year, may raise such sum of money as they shall think necessary for the regulation of said town, which sum shall be assessed upon the land-holders, free-holders and house-holders within the said town, by the assessor, according to the regulations to be established by the trustees, and collected by the collector by such a time, and be paid and disposed of in such manner as the said trustees shall provide: Such sum shall not, in any one year, exceed one half the amount directed by law to be collected as a state tax on persons and property within said town, but if that sum be insufficient to answer the purpose of regulating said town, a majority of said trustees may call a meeting of the landholders, freeholders and householders who, by a majority of votes, may direct that a further sum be raised as to them may appear expedient, which further sum shall be assessed, collected and paid as shall be directed by the said trustees. Every free white male inhabitant subject to taxation, who shall be in the occupancy of a room or rooms, separate and apart to himself, shall be deemed a householder, and shall be entitled to vote at the town elections. The said trustees shall meet on their own adjournment and make such laws, in writing, as to them may appear expedient, for the good government of said town, not inconsistent with the laws of this state. They may impose reasonable fines upon all persons who shall offend against the laws made by the trustees; and may demand and recover such fines before any justice of the peace or court of record having jurisdiction of such sums. In case of death, resignation or removal from town of any of the trustees, the citizens may elect persons to fill the vacancy, at such time and place as the balance of said trustees may appoint by advertisement at the court house and other public places within said town.

WARRENTON.

By An act, to incorporate the town of Warrenton in Warren county, passed February 7, 1820, the town of Warrenton is incorporated, and all free white male citizens above the age of twenty-one years, of said town, on the first Monday of April, annually, at the court house in said town, may vote for five persons, inhabitants of said town, as trustees; a majority of whom shall constitute a quorum to do business; also a town treasurer, assessor and collector, to serve for the term of one year; which election shall be superintended by a justice of the peace, and shall commence at ten o'clock in the forenoon, and close at three o'clock in the afternoon of the same day. The said trustees shall be a body corporate and politic, by the name and style of "The trustees of the town of Warrenton," and they and their successors shall be capable, in law, of suing and being sued, of pleading and being impleaded, defending and being defended, in all manner of suits and actions in either law or equity; and also to do all acts which are incident to bodies corporate and politic. A majority of said trustees in each year, may raise such sum of money as they shall think necessary for the regulation of said town; which sum shall be assessed upon the landholders, freeholders and householders, within the said town by the assessor, according to the regulation to be established by the trustees, and collected by the collector by such a time, and be paid in such manner, as said trustees shall provide. Such sum shall not in any one year, exceed one half the amount

Election of trustees, treasurer, assessor and collector.

Trustees incorporated.

Powers.

directed by law to be collected as a state tax, on persons and property within said town; but if that sum be insufficient to answer the purpose of regulating said town, a majority of said trustees may call a meeting of the landholders, freeholders and householders of said town, by giving five day's previous notice of such meeting, and the said landholders, freeholders and householders, by a majority of votes, may direct that a further sum be raised as to them may appear expedient, which further sum shall be assessed, collected and paid as shall be directed by said trustees. Every free white male inhabitant, subject to taxation, who shall be in the occupancy of a room or rooms, separate and apart to himself, shall be deemed a householder, and shall be entitled to vote at the town elections. The said trustees shall meet on their own adjournment and may make such laws, in writing, as to them may appear expedient for the good government of said town, not inconsistent with the laws of this state. They may impose reasonable fines upon all persons who shall offend against the laws made by the trustees, and all such fines may demand and recover, before any justice of the peace or court of record having jurisdiction of such sums. In case of death, resignation or removal from town of any of the trustees, the citizens may elect persons to fill the vacancies. at such time and place as the balance of said trustees may appoint, by advertisement at the court house and other public places within said town. The one acre lot adjoining said town of Warrenton, the property of John Anthony, is included within the limits of said incorporation and the provisions of this act shall extend thereto.

SHIELDSBOROUGH.

By An act to establish and incorporate the town of Shieldsborough, passed January 21, 1818, the place situated on the west side of the Bay St. Louis, in the county of Hancock, known by the name of Shieldsborough, is declared to be a town, under the name of Shieldsborough; and the owners thereof shall deposit in the clerk's office of the county court of the county aforesaid, within six months after the passage of this act, a plat of said town. The town of Shieldsborough is incorporated, and the citizens of said town, at the court house therein, may vote for five persons, inhabitants of said town, as trustees;* a majority of whom shall constitute a quorum to do business; also a town treasurer, assessor and collector, to serve for the term of one year; said election shall be superintended by a justice of the peace, and shall commence at ten o'clock in the forenoon, and close at three o'clock in the afternoon of the same day. The said trustees shall be a body corporate and politic, by the name and style of the trustees of the town of Shieldsborough, and they and their successors shall be capable, in law, of suing and being sued, of pleading and being impleaded, defending and being defended, in all manner of suits and actions in either law or equity; and also to do all acts which are incident to bodies cor-

Election of trustees, treasurer, assessor and collector. (*See the next succeeding act) porate and politic. A majority of said trustees, in each year, may raise such such sum of money as they shall think necessary for the regulation of said town; which sum shall be assessed upon the landholders, freeholders and householders within the said town, by the assessor, according to regulations to be established by the trustees, and collected by the collector, by such a time, and be paid and disposed of in such a manner as the said trustees shall provide: Such sum shall not, in any one year, exceed one half the amount directed by law to be collected as a state tax, on persons and property within said town; but if that sum be insufficient to answer the purpose of regulating said town, a majority of said trustees may call a meeting of the landholders, freeholders and householders of said town, by giving five day's previous notice of such meeting, and the said landholders, freeholders and householders, by a majority of votes, may direct that a further sum be raised, as to them may appear expedient; which further sum shall be assessed, collected and paid, as shall be directed by the said trustees. Every free white male inhabitant, subject to a taxation, who shall be in the occupancy of a room or rooms, separate and apart to himself, shall be deemed a householder, and shall be entitled to vote at the town elections. The said trustees shall meet on their own adjournment, and may make such laws, in writing, as to them may appear expedient, for the good government of said town, not inconsistent with the laws of this state. They may impose reasonable fines upon all persons who shall offend against the laws made by the trustees, and all such fines demand and recover, before any justice of the peace, or court of record having jurisdiction of such sums. In case of death, resignation or removal from town, of any of the trustees, the citizens may elect persons to fill the vacancy, at such time and place as the balance of said trustees may appoint, by advertisement at the court house and other public places within said town.

Time of holding elections.

By An act, to change the time of holding elections for trustees and other officers of the town of Shieldsborough, passed January 29, 1819, the election of trustees and other officers of the town of Shieldsborough, shall be held on the second Monday in July, annually.

COLUMBUS.

Commissioners to lay out town.

By An act, to authorise a lease of certain town lots therein named, and for other purposes, passed February 10, 1821, William Cocke, Gideon Lincecum, Robert D. Haden, Richard Barry, Thomas Townsend, Silas M'Bee, John Deck, William Leech, and David Kincaid, are appointed commissioners to lay out the south west quarter of section sixteen, in township number eighteen, range number eighteen, west of the basis meridian of Madison county, Alabama, or so much of said quarter section as they may think suitable for town lots, which shall not contain more than one acre nor less than one fourth of an acre;—The site of the town of Columbus being included in the said sixteenth section. When the commissioners shall have laid out said town lots, the county court of Monroe county, shall appoint three agents for the purpose of leasing said town lots; and the said agents, or a majority of them may lease the said lots for the term of ninty-nine years, reserving an annual rent therefor, payable on a certain day in each year, and take such security from the lessees as to insure a certainty and punctuality of payment; and if any vacancy occur in said agency, the said county court may fill the same. The said agents, or a majority of them shall give public notice at three public places in said county, of the day and place of leasing said lots, at least twenty days previous thereto; and they shall on such day or days offer the said lots separately, and the same shall be leased to the highest bidder. The agents appointed or a majority of them, under the direction of the said county court shall apply with impartiality the proceeds arising from the rent of said lots and lands to the purpose of education and no other, according to the direction of the act of congress, entitled 'An act to provide for leasing certain lands reserved for support of schools; in the Mississippi Territory,' approved January 9, 1815, and that said agents shall before entering on the duties of their agency, give security to the said county court in such sum and penalty as said court shall require; conditioned for the faithful discharge of their duties. The said agents may lease for the purpose of improvement, or for an annual rent, the other lands in said county appropriated by congress to the support of schools; they conforming to the directions of the act of congress herein before referred to

Town lots to be leased.

Franklin academy established.

There shall be established in the county of Monroe, an academy by the name of Franklin Academy. The aforesaid commissioners, herein before expressly named, shall be a body politic and corporate by the name of the President and Trustees of the Franklin Academy, and by that name shall be capable in law to sue and be sued, plead and be impleaded, in any of the courts of law or equity in this state; to receive all donations, and in general, may do all acts for the benefit of said institution which are incident to bodies politic and corporate. The first meeting of the trustees shall be on the first Monday in June next, in the town of Columbus, at which time and place they or a majority of them shall choose a president by ballot, out of their own body, and in case a majority shall not attend at the first meeting, any three members may call a meeting of said trustees by advertisement in the town of Columbus, giving ten days notice of said meeting, at which time the members present may choose a president; and thereafter the ordinary meetings of the board of trustees shall be on their own adjournment. The president, or in his absence, a member shall be chosen *pro tempore*, as president of the meeting, and the board of trustees may fix upon a site for building said academy; they shall control the regulations of such institution, and employ such teacher or teachers as they may deem necessary for the literary order of said academy and the good morals of the students. The trustees may increase their number to twelve and no more; they may fill by ballot, all vacancies occasioned by death, resignation or removal; the board may at their regular meetings, appoint a successor or successors; the person or persons so chosen or appointed shall on his accepting said appointment, bind himself in a bond precisely in the same as is prescribed for the commissioners or trustees herein before mentioned. The trustees may raise by lottery for the benefit of said academy, the sum of five thousand dollars on such scheme and plan as they may deem advisable.

By An act, to incorporate the town of Columbus, in the county of Monroe, passed June 27, 1822, the free citizens residing within said town, shall, on the first Saturday in October in each year at the house of William Dowsend in said town, hold a meeting, to commence at ten o'clock in the forenoon and close at four in the afternoon, elect by ballot five persons and the persons having the greatest number of votes, shall be declared duly elected, to serve as selectmen for one year next succeeding their election, and until their successors shall be chosen; a majority of the persons so chosen, shall constitute a quorum to do business; there shall at the time, place, and in the manner aforesaid, be chosen a town treasurer, assessor and collector, to serve for one year, and until others shall have been elected; and the selectmen shall on the Monday next succeeding such election, in each year, or as soon as may be convenient thereafter, meet and choose by ballot, from among their own number, a president, who shall be commissioned by the governor, as a magistrate and justice of the peace for said town, and continue in office until the first Saturday in October next thereafter, and until a successor shall be elected and commissioned; who shall preside and keep order at the meetings of the said selectmen:—Said selectmen are constituted a body politic and corporate, in fact and name, by the style of the President and Selectmen of the town of Columbus, and by that name they and their successors shall have perpetual succession, shall have a common seal, which they may alter at pleasure; and they and their successors shall be persons capable in law, to purchase, take, receive, hold and enjoy, to the use of them and their successors, all manner of real estate and the same to lease, release, sell, alien or convey, and by the same name, they and their successors shall be liable and capable in law of suing and being sued, pleading and being impleaded, in all manner of suits and actions, in either law or equity, and to do all other acts incident to bodies corporate. Elections shall be held by the president and any two of the selectmen; and in case of the death or absence of the president, it shall be holden by three selectmen. Every free white person that shall reside in the said town, or hold a lot in his own right therein shall be entitled to vote for selectmen, treasurer, assessor and collector; and in case of the death, resignation or removal of any of the selectmen, treasurer, assessor or collector, an election shall be held to fill such vacancy, in manner as above pointed out, the president or selectmen giving five days previous notice by advertising the same at three of

Election of selectmen of the town:—Also, treasurer, assessor and collector.

Selectmen incorporated.

the most public places in said town. The said president and selectmen may raise by tax in each year a sum not exceeding twenty-five cents on every hundred dollars' worth of property liable to taxation in said town, and not more than one dollar on each poll; and they may appoint overseers to regulate the working on the streets, and make all such by-laws for the good government of said town, as they may deem expedient, not inconsistent with the laws and constitution of this state or the United States; and may inflict penalties on any person, for the violation of any by-law, not exceeding fifty dollars for any one offence, recoverable with costs, in the name of the president and selectmen, for the use of said town, before any justice of the peace within said town.

PEARLINGTON.

Pearlington company incorporated.

By An act, to incorporate the Pearlington Company, passed February 7, 1820, George H. Nixon, David Morgan, Cowles Mead, Merry Bracy, Charles Lynch, John Wates, H. T. Bracy, Thomas Nixon, Thomas Shields, John Nixon, W. W. New, Thomas Collins, William Marbury, J. W. Baylor, R. T. Baylor, D. C. Williams, Eli W. Ripley, Noel Jourdan, William T. Lenoir, Hope Lenoir, John Blair, Willoughby Barton, Harman Hammon, George Sheriff, Isaac Graves, Elihu Carver, H. G. Runnells, Hugh M'Gowen, and H. M. Runnells, are created a body corporate and politic, by the name and style of the Pearlington Company; and they and their successors who shall become members of said company, shall remain a body corporate and politic; and by that name they and their successors shall be capable in law of suing and being sued, pleading and being impleaded, defending and being defended, before any court of law or equity, in all manner of actions or complaints. The said company and their successors shall be capable in law to purchase, take, receive, hold and enjoy to the use of them and their successors, all manner of real and personal estate, and the same to lease and release, sell, alien and convey; which estate, real and personal, shall not exceed five hundred thousand dollars:—Said company shall not establish a bank or issue any paper as a circulating medium. The said company may use a common seal; appoint their officers; prescribe their duties; regulate their terms of meeting, and make such by-laws as they may deem most usefull; not repugnant to the laws of the United States and of this state. Said company may lay out a town on their land, situated in Hancock county, six miles from the mouth of the most eastern branch of Pearl river and on the eastern bank of the same; which town shall be known by the name of Pearlington; the owners thereof shall deposit in the clerks office of the county court of said county, a plat of said town, within three months after the passage of this act.

Election of selectmen of the town: Also treasurer, assessor and collector.

By An act, to incorporate the town of Pearlington in Hancock county, passed June 29, 1822, the town of Pearlington is incorporated; and all free white male citizens, above the age of twenty-one years, of said town, may on the second Monday of August, annually meet at Francis Lenovis' house, in said town, to vote for five persons, inhabitants of said town, as selectmen, a majority of whom shall constitute a board to do business; also a town treasurer, assessor and collector, to serve for the term of one year, and until others shall have been elected; and the said selectmen shall, on the day next succeeding such election, in each year, or as soon as may be convenient thereafter, meet and choose by ballot from among their own number, a president, who shall be commissioned by the governor, as a magistrate and justice of the peace for said town, to continue in office until the first Monday in August next, thereafter and until a successor shall have been elected and commissioned, who shall preside and keep order at the meetings of the said selectmen; and the said selectmen are constituted a body politic and corporate, in fact and in name, by the style of the President and Selectmen of the town of Pearlington; and by that name they and their successors shall have perpetual succession; and shall be capable in law of suing and being sued, pleading and being impleaded, defending and being defended, in all manner of suits and actions, in either law or equity; and also to do all acts incident to bodies corporate and politic. A majority of said selectmen, in each year, may raise such sum of money as they shall think necessary for the regulation of said town, which sum shall be assessed upon the landholders, freeholders and householders within the said town, by the assessor, according to regulations to be established by the selectmen, and collected by the collector, by such time, and be disposed of in such manner as the said selectmen shall provide: Such sum shall not, in any one year, exceed one half the amount directed by law to be collected as a state tax on persons and property, within said town; but if that sum be insufficient to answer the purpose of regulating said town, a majority of said selectmen, may call a meeting of the landholders, freeholders and householders, of said town, by giving five days previous notice of such meeting; and the said landholders, freeholders and householders, by a majority of votes, may direct that a further sum be raised, as to them may appear expedient; which further sum shall be assessed, collected and paid, as shall be directed by the said selectmen. Every free white male inhabitant, subject to taxation, who shall be in the occupancy of a room or rooms, separate and apart to himself, shall be deemed a householder, and shall be entitled to vote at the town elections. The said selectmen shall meet on their own adjournment, and may make such laws, in writing, as to them may appear expedient, for the good government of said town, not inconsistent with the laws of this state. They may impose reasonable fines upon all persons who shall offend against the laws made by the selectmen, and all such fines, may demand and recover before the magistrate of the town, or before any other justice of the peace within said town, having jurisdiction of such sums. In case of death, resignation, or removal from town, of any of the selectmen, the citizens may

Selectmen incorporated.

Powers.

elect such persons to fill the vacancy, at such time and place as the balance of said selectmen may appoint, by advertisement at the court house and other public places within said town. If the inhabitants in said town fail, in any year, at the time prescribed by this act, to elect the selectmen of said town, any one of the selectmen of said town, for the year preceding, may call a meeting of the citizens of said town, for the purpose of electing selectmen for said town, for that year; or, if said selectman or men fail to call such meeting, any justice of the peace residing within the limits of said town, may do so; in either case, five days notice shall be given by advertisement, and the selectmen, so elected, shall have the powers and privileges they would have had if elected at the time prescribed by this act.

NATCHEZ.

Limits of the city.

By An act, to amend an act entitled An act, to erect the town of Natchez into a city and to incorporate the same and for other purposes therein mentioned, passed December 9, 1809, the tract of country included within the following boundaries, shall hereafter be designated by the name of the city of Natchez, to wit: assuming the door of the Roman Catholic Chapel, within said city as a central point, thence running in the direction of the street in front of said chapel, which was laid off in the directions of north 30 degrees east and south 30 degrees west, one mile each direction, at the extremities of which said two lines two points will be given in the upper and lower boundaries of said city, from which said two points running two lines at right angles to the first, or parallel to the streets of said city, which are laid off south 60 degrees east, one mile each; at the extremities of which last two lines, two other points will be given, which being connected by a right line, will form the rear boundary of said city, thence returning in the upper and lower boundaries, and continuing said lines or boundaries parallel to the streets of the city which were laid off north sixty degrees west to the middle of the river Mississippi, thence along the middle of said river, thereby completing the limits of said city. The landholders, freeholders and householders within the city, shall on the first Monday in January in each year, at or near the house where the mayor's court was lately holden, hold a meeting to commence at ten o'clock in the forenoon; and close at five o'clock in the afternoon; and elect by ballot, and a majority of votes, seven selectmen (a majority of whom shall at all times constitute a quorum to do business) also a city treasurer, assessor and collector to serve for one year. The selectmen shall on the day succeeding such election in each year, meet and choose by ballot from among their own number, a president who shall in each and every year be commissioned by the governor, as a magistrate and justice of the peace for said city, to continue in office until the first Monday in January next thereafter; whose duty it shall be to preside and keep order at the meetings of the selectmen. The selectmen shall be a body politic and corpor-

Election of selectmen, treasurer, assessor and collector.

Their powers.

ate in fact and name, by the style of "The president and selectmen of the city of Natchez," and by that name they and their successors shall have perpetual succession;—shall have a common seal which they may alter at pleasure; and they and their successors shall be persons capable in law to purchase, take, receive, hold and enjoy to the use of them and their successors, real estate, in fee simple or any lesser interest in real estate, and the same to lease, release, sell, alien or convey, and all manner of goods, chattels and personal estate to purchase, receive and enjoy, to sell or otherwise dispose of, and by the same name, they and their successors shall be liable and capable in law of suing and being sued, pleading and being impleaded in all manner of suits or actions in either law or equity, and do all other acts and deeds which are incident to bodies corporate.

Taxes.

(*See page 628.)

The selectmen may in every year, raise such sums of money by a majority of votes as they may think necessary for the supply of said city; to be assessed upon the landholders, freeholders, and householders within said city by assessor, according to the regulations to be established by the said selectmen, and collected by the collector at such time, and be paid and disposed of in such manner as the said selectmen shall direct; the sums so to be raised, shall not, in any year, exceed *twelve and a half cents** for every hundred dollars' worth of property in said city, liable to assessment.

Vacancies in board of selectmen.

On the death or resignation of any of the selectmen, the president shall call a meeting of the landholders, freeholders and householders within said city, five days' previous notice of such meeting being given in some newspaper within this territory, who shall by ballot and a majority of votes, proceed to supply such vacancy or vacancies.

By-laws.

The selectmen shall meet on their own adjournments and may make such by-laws and regulations in writing, as to them shall appear necessary for the good government of the city, and the same put in execution, revoke and alter as to them shall appear expedient;—All such laws shall be subject to the inspection and revocation of the legislature.

Clerk of the market, &c.

Collection of fines.

They shall also appoint a clerk of the market and such other officers as they may think necessary: and by ordinance require such security from the officers, and annex such fees to the offices of the corporation, and impose such fines for the neglect of duty or misconduct in office, as shall appear necessary, and impose and tax reasonable fines and amercements, in any one case not exceeding fifty dollars, upon all persons who shall offend against the laws of the corporation, and all such fines and amercements, shall take and levy of the goods and chattels of such offender, by warrant under the hand and seal of the president, directed to the constable of said city, who is required to execute the same: which fines and amercements shall be paid to the city treasurer, to be appropriated to the use and benefit of the inhabitants, of the city. No claim or demand against the city of Natchez or due to said city, shall be impaired, and no property or claim of said city derived from the United States, or from any individual or individuals shall be affected or impaired by this act.

Support of the poor.

The expense of supporting

the poor within said city, shall not in future be exclusively chargeable on its inhabitants, but be a general county charge.

Tax on carts, &c.

An act, to amend an act, entitled An act, to amend an act, entitled An act, to erect the town of Natchez into a city, and to incorporate the same, and for other purposes therein mentioned, passed December 7, 1811, authorises the president and selectmen of the city of Natchez to lay a tax on such carts, drays, wagons or other vehicles of transportation, and on such only as may be employed in transporting for pay from one place to another within the city; they may levy the city tax at such time within each year, as to them may seem expedient.

Manner of conducting elections.

The selectmen in office on the last day of December, in each year, shall remain in office until successors shall be duly elected, and they or any three of them remaining in office, shall preside at the annual election and declare the persons duly elected selectmen at any such election, and when there shall be an equal number of votes for two or more candidates, it shall be the duty of the judges presiding at such election, to declare which of the said candidates is elected. If the whole number of selectmen authorised to be elected on the first Monday in January, shall not be then elected, or if no election shall be had on that day, the selectmen remaining in office, shall appoint another day by public notice given in said city, at least eight days previous thereto, for holding an election for selectmen, or any number thereof who may not have been duly elected on the said first Monday in January. Whenever any person or persons shall think himself, herself or themselves aggrieved by any judgment of the president of the said board of selectmen, when acting in his capacity of city magistrate, in any matter or cause arising under the ordinance and by-laws for the government of said city, the persons so aggrieved, may appeal to the board of selectmen who may hear said appeal and give such judgment thereon, as to them shall appear equitable and right; and in case of reversal of said judgment so appealed from the appellee or plaintiff in the suit shall be adjudged to pay to such appellant his costs. The president and selectmen may lay out, alter, and establish all needful roads and highways leading out of said city, as far as the limits thereof; and they may lay out and extend the streets of said city in such manner as shall appear expedient, but they shall have no power to alter the boundaries of the lots contained in the plan of said city and the streets thereof, as heretofore established.

Appeals from the president of the selectmen.

Power to lay out streets, &c.

Licenses to keep dogs.

By An act, entitled An act, to amend an act entitled An act, to erect the town of Natchez into a city, and to incorporate the same, and for other purposes therein mentioned, passed December 24, 1812, it is provided that the president and selectmen of the city of Natchez, may pass an ordinance requiring every person keeping or owning a dog in the city, to procure a license from said president and selectmen, permitting such person to keep such dog, and they may require every person at the time of obtaining such license to pay a sum of money, not exceeding one dollar *per annum*, for each dog so licensed to be kept, besides the sum of twenty-five cents to be paid on each license to the clerk of said city, for making out the same; also, they may require that each dog so licensed shall be furnished, by the owner or keeper thereof, with a brass collar or mark of his being so licensed. Any person may shoot or kill a dog running at large in said city, not having such collar or mark and not being licensed. The president and selectmen may pass such ordinances as shall be necessary to suppress the keeping of disorderly houses in said city: Such ordinances shall not extend further than to the infliction of a fine not exceeding twenty dollars for each offence against the provisions of such ordinance, to be levied or recovered in such manner as said ordinance shall prescribe.

Qualifications of electors:

By An act, extending the right of suffrage for selectmen, treasurer, assessor and collector for the city of Natchez, and prescribing the qualifications necessary for those offices, passed January 17, 1814, it is prescribed that every free white male person, who may have attained the age of twenty-one years, and shall have been an inhabitant of the city of Natchez for at least six months next preceding any city election, and who shall have been assessed by the assessor, and who shall have paid a city tax on real or personal property, by the authority of the ordinances of said city, within the year preceding such election; and also, holders of a lot or lots within said city, which has been assessed and taxes paid thereon, under the authority aforesaid, whether the owner of such lot or lots be an inhabitant of said city or not, shall be entitled, and none others, to vote for selectmen, treasurer, assessor and collector for the said city of Natchez: and such alone, shall also be eligible to any such office, provided, he live in said city.

Grocers, &c.

By An act, supplemental to An act, to erect the town of Natchez into a city, and to incorporate the same, passed February 3, 1818, it is provided that the president and selectmen of the city of Natchez may pass ordinances for regulating petty grocers, keepers of ordinaries, and victualling houses, or where fruits, meats or liquors, shall be sold in order to be eaten or drank at such houses within the said city, and for exacting a recognizance from every such grocer or other person, as aforesaid, in such penalty and with such securities as they shall deem reasonable, conditioned, that he or she shall not permit any strong or spirituous liquors to be drank in his or her shop, out house, yard or garden, or suffer any kind of gaming within the same, or sell any sort of strong or spirituous liquors to any servant, apprentice or slave, without permission from his or her master or mistress. The president and selectmen may also restrain, under such penalties as they may deem proper, free people of colour from keeping tippling shops and victualling houses, and from selling spirituous liquors and provisions of any description.

Precautions against fire.

The president and selectmen, shall and may pass ordinances to regulate the keeping, carting and transporting gun powder or other combustible or dangerous materials, and the use of lights in stables; remove or prevent the construction of any fire place, hearth, chimney, stoves, ovens, boilers, kettles or apparatus used in any house, building, manufactory or business which may be dangerous in promoting fires; to appoint one or more officers, at reasonable times, to enter into and examine all dwelling houses, lots, yards, enclosures and buildings, in order to discover whether any of them are in a dangerous state, and to cause such as may be dangerous, to be put in a safe and secure condition; to regulate and prevent the carrying on of manufactories dangerous in promoting fires; to appoint fire wardens, with such duties and powers as said president and selectmen shall prescribe; to appoint firemen to take the management of fire engines and apparatus thereto belonging, under such regulations as they shall deem necessary; to compel the owners and occupants of buildings to have scuttles on the roofs of such buildings, and stairs leading to the same; to regulate the dimensions of chimneys hereafter erected, so as to admit chimney sweeps to sweep and clean the same; to require the inhabitants respectively, to provide such and so many fire buckets, and in such manner and time as they shall prescribe, and to regulate the use of them in time of fire, and to adopt such measures, for the prevention and suppressing of fires, as the president and selectmen shall deem expedient; to regulate cartmen and the price of cartage and drayage; to appoint an examiner of weights and measures, and prescribe his powers and duties; to regulate the running at large of swine and cattle; to regulate the assize and quality of bread, and to provide for the forfeiture and seizure of bread baked contrary thereto; to regulate the market, to restrain and punish forestalling and regrating; to direct and regulate the paving or flagging of side walks; to regulate and arrange with uniformity, such buildings as shall be erected, and generally make all such rules and by-laws, for the government of said city, as the said president and selectmen may deem expedient, not repugnant to the constitution and laws of this state; and inflict penalties on any person for the violation of any by-law, not exceeding fifty dollars for any one offence, recoverable with costs, in the name of the president and selectmen, for the use of said city before the city magistrate or any justice of the peace, within the limits of said city, in which action the first process shall be by warrant, returnable forthwith; and there shall be no stay of execution after judgment, saving the right of appeal to the president and selectmen. The said president and selectmen may subject the parent, master, mistress or guardian of any minor, apprentice, servant or slave, to any such penalty, for any offence committed by such minor, apprentice, servant or slave; but all by-laws made by the president and selectmen shall be subject to repeal by the legislature; and nothing herein contained, shall prevent appeals to the superior court, in the manner that is or may be prescribed by law, in cases of appeals from the judgments of justices of the peace. The president and selectmen may raise by tax, each year, a sum not exceeding thirty-seven and a half cents on every hundred dollars' worth of such property as may

Regulation of drayage, &c.

Market.

Paving streets.

Taxes.

be liable to taxation in said city; they may exempt the inhabitants of said city, or such part thereof, as they may deem proper, from labour on the streets and highways, and instead thereof they may lay a poll tax, not exceeding five dollars per head, on each male person above twenty-one years of age.

Sum to be expended by board of health.

(*See page 639, sec. 9.)

The president and selectmen of said city, shall set apart a portion of the revenue of said city, arising from taxes assessed and collected in said city, not exceeding *one third** thereof, to be expended under the direction of the board of health, in levelling and raising the streets, lanes and public alleys, and in cutting drains, and in the construction of sewers in the said streets, lanes and public alleys, provided, no part of the revenue, arising from the poll tax, to be collected for the repairs of the streets and highways, generally, be appropriated to that purpose.

Appointment of city clerk and constable.

By An act, to vest in the corporation of the city of Natchez, the appointment of their city clerk and constable, passed January 20, 1821, the president and selectmen of the city of Natchez, shall have exclusive power to appoint the city clerk and city constable of said city, and the said clerk and constable shall take an oath of office, and perform such duties, and give bond and security, if required, to the said president and selectmen, in such sum as they, by ordinance, may prescribe, and shall hold their office during the pleasure of said president and selectmen.

Harbour master.

By An act, to provide a harbour master for the landing place in the city of Natchez, passed January 26, 1821, there shall be appointed an officer, to be called the harbour master, for the landing place on the river Mississippi, within the limits of the city of Natchez, and said officer shall be appointed and commissioned by the governor, on the recommendation of the president and selectmen of said city, to hold his office during the pleasure of the governor; and whenever the said office shall become vacant, it may be filled by an appointment made for the time, by the president and selectmen, and the harbour master so appointed, shall hold said office until the appointment shall be made in the manner above mentioned. Before the said harbour master shall enter on the duties of his office he shall execute a bond, payable to the said president and selectmen, by their corporate name, with two sufficient securities, to be approved by the said president and selectmen in the penal sum of two thousand dollars, conditioned for the faithful performance of the duties of his office; and shall take an oath faithfully to execute the duties of his office, to be administered by any judge or justice of the peace, which bond may be put in suit in any court having cognizance thereof, at the instance and for the use of any person aggrieved by said harbour master, and shall not be void on the first recovery, nor until the whole penalty shall be recovered.

Powers and duties.

Said harbour master may regulate and station all steam boats and vessels in the stream of the Mississippi within the limits of said city and landing place thereof, and remove such vessels as are not employed in receiving or discharging their cargoes, to make room for such others as require to be more immediately accommodated for the purpose of receiving or discharging theirs. And as to the fact of their being employed in receiving or discharging their cargoes, the said harbour master shall be the sole judge, and he may determine how far and in what instances persons having charge of steam boats and vessels, shall accommodate each other in their respective situations; and if any person shall oppose said harbour master in the discharge of the duties of his office, such person, for each offence, shall forfeit and pay fifty dollars, to be recovered with costs of suit, in the name of the president and selectmen, before any justice of the peace or court having cognizance thereof; and such fines, when collected, shall be paid into the treasury of the city of Natchez, for the use of the Natchez hospital. Said harbour master shall superintend and enforce all laws of this state, and ordinances of the city of Natchez for preventing and removing nuisances at or about the shore and landing place of said river within the limits of said city. He may appoint a deputy and remove the same, and appoint another in his room.—He may demand and receive from the commander, owners or consignees or either of them, of every steam boat, barge, keel, flat or other boat, that may come to the landing place aforesaid and load, unload or make fast to the shore within the said limits, such compensation as shall be prescribed by said president and selectmen—but said compensation shall not exceed the following rates, to wit: For every steam boat or vessel of large size, the sum of five dollars; for every barge or keel boat, two dollars; for every flat boat, one dollar; and no boat shall be subject to the charges before mentioned, that does not land for the purpose of discharging any part of its cargo and not remaining at the landing more than twenty-four hours. And when on application of the person having charge of any boat, employed in the river trade, the said harbour master shall adjust any difference which may arise respecting the situation or position of such boat or boats at the landing place aforesaid (which difference the said harbour master may hear and determine,) he, the said harbour master may demand and receive from the party in default, in the premises, two dollars for every difference so adjusted. He shall cause to be planted a sufficient number of posts and spiles at the landing aforesaid, for the mooring and making fast of all vessels.—He shall superintend the repairs and improvements necessary to be made, in keeping said landing place in good repair, and shall have control of the laborers employed in such repairs and improvements. Said president and selectmen may pass ordinances regulating the said landing place and prescribing the powers and duties of the harbour master, not inconsistent with the laws and constitution of the United States or of this state.

Compensation.

HEALTH LAWS.

Certain parts of the acts providing for the more healthy police of the city of Natchez, are repealed. In the following summary of those acts, it has been thought advisable to include what is repealed, for the purpose of rendering more intelligible, what is in force. The number at the commencement of each paragraph denotes the section in the act.

Commissioners of health and police.

By An act, for the more healthy police of the city of Natchez, and to provide against infectious and pestilential diseases, passed February 5, 1818, there shall be annually appointed and commissioned by the governor, five commissioners of health and police, for the city of Natchez, resident within the limits of said city, who shall continue in office one year from the first day of January, next succeeding their appointment, and all vacancies from death, resignation or otherwise, shall be filled and supplied for the residue of the year by the same authority.

Clerk. (*See Act of Jan. 18, 1819: sec. 2.)

2. The clerk* of the president and selectmen of said city, shall ex-officio, be clerk of the board of said commissioners; and keep a journal of their proceedings; and perform every thing incident to the office and duties of a clerk of said board; and said board of commissioners may hold their meetings at the place designated for holding meetings of the president and selectmen of said city, or at such other place as said board may appoint.

Sewers, drains, vaults, &c. to be made.

3. Said commissioners shall cause common sewers, drains and vaults to be made in any part of said city, and direct the cutting of any street into any drain or sewer, and direct the cleansing and securing of any street, vault, drain, sink or sewer; and the filling or levelling any vault, sink, cellar, drain or sewer, and the discontinuance, levelling or filling up of any alley within said city, as in their opinion, shall most contribute to the health and convenience thereof.

Expenses, how defrayed.

4. Said board of commissioners shall cause estimates of the expenses of conforming to the regulations contained in the preceding section, to be made and an equitable assessment thereof, among the owners or occupants of the houses and lots intended to be benefitted thereby, and in proportion as nearly as may be to the advantage which each may be deemed to acquire, and the injury which might result from the neglect of such regulation on any particular lot; and said board of commissioners shall appoint such competent persons as they may deem proper, to make every such estimate and assessment, who, before they enter upon the execution of their trust, shall severally make oath before said board of commissioners, or some one of them, which oath said board of commissioners or any one of them is authorised to administer, to make said estimate and assessment fairly and impartially, according to their best skill and judgment. And the said persons, after having made such estimate and assessment, shall certify the same in writing to the said board of commissioners, which being ratified by said board of commissioners, shall be binding and conclusive upon the owners and occupants of such lots, so to be assessed; and shall be a lien

or charge on every such lot, and the owners or occupants shall also be respectively liable, on demand, to pay the sum at which such houses or lots shall be assessed, to such person as the said board of commissioners shall appoint to receive the same, and in default of such payment, or any part thereof, said board of commissioners, by a warrant attested by their clerk, may levy the same by distress and sale of the goods and chattels of such owner or occupant, refusing or neglecting to pay the same: and the money when collected or received shall be applied to the purpose for which the same was so assessed. And when the person to whom such warrant may be directed, shall return thereon that the owner or occupant of such lot has no goods or chattels, found within the limits of said city, whereon distress can be made, said board of commissioners may issue their warrant, reciting such return, commanding the person to whom said last mentioned warrant may be directed, to sell the lot so assessed or so much thereof, at public auction, as shall be sufficient to pay the sum assessed thereon, and costs: And the person to whom the last mentioned warrant may be directed, may sell, at public auction, to the highest bidder said lot or so much thereof as shall be sufficient to pay the amount so assessed thereon, and costs, having advertised the time and place of such sale, at least thirty days, in some public newspaper printed in said city, and convey to the purchaser all the right, title and interest of such owner or occupant to such lot, or such part thereof as may be sold as aforesaid; *Provided*, that the expense in opening drains, the construction of sewers and vaults, the cleansing and securing the same, the raising, reducing and levelling the streets in the said city, shall be defrayed out of the funds belonging to the said city; and the making of side walks and pavements, on the sides of streets, shall be done at the expense of the owner or occupant of the lot, which such side walks and pavements shall front; and if the said owner, his or her heirs or assigns, shall pay to the purchaser of any lot or part thereof, sold under the provisions of this act, his heirs or assigns, or the said commissioners or their treasurer within twelve months after the sale, the amount which shall have been assessed on such lot and all costs, with interest thereon, at the rate of one hundred per cent. per annum, the sale so made shall be void, and the purchaser, purchasers, his, her or their heir, heirs or assigns shall reconvey the same to said owner, his heirs or assigns accordingly.*

5. When no agreement shall exist between landlord and tenant, respecting the payment of the charges to be assessed as aforesaid, the same, as between such landlord and tenant, shall be considered as payable by the landlord or owner of the lot aforesaid; and if any money, so to be assessed, be paid by any person, when by agreement, or by law, the same ought to have been paid by some other person, it shall be lawful for the person paying to recover the money so paid, with interest and costs, as so much money paid for the use of the person who ought to have paid the same; and the assessment aforesaid, with proof of payment, shall be conclusive evidence in such suit.

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*See Act of Feb 10, 1821, sec 7)

Removal of damaged goods, provisions, &c.

6. Said board of commissioners may order and direct the removal, without the limits of said city, or to some other place of safety therein, of any damaged cotton, cotton seed, manure, tainted provisions, infected goods, wares or merchandise, or other matter or commodity, which they may deem prejudicial to the health of the inhabitants of said city; and the owner or occupant of any lot or building, on, or in which such cotton, cotton seed, manure, tainted provisions, infected goods, wares or merchandise, or other matter or commodity may be situated, refusing or neglecting to remove the same, within the time directed by said board of commissioners, shall be liable to a fine of ten dollars for each day's neglect or delay in removing the same, to be recovered before any magistrate or court, having jurisdiction thereof.

Burying ground.

(*See page 640, sec. 9)

7. Said board of commissioners shall keep in order, the burying ground, now used in said city, and designate and lay out such other burying ground* or burying grounds as they may deem necessary; and regulate the buryings therein and appoint a sexton to such burying ground, and prescribe his duties and compensation. The body of no white person shall be buried within the limits of said city, in any other place than the burying ground now used in said city, or in such other as said board of commissioners may designate; and every person offending in the premises shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined in a sum not exceeding one hundred dollars. Said board of commissioners shall designate and lay out such burying ground in said city as they may deem necessary for the interment of the bodies of slaves and coloured persons: and any person interring the body of any slave or coloured person in any place in said city, other than the burying ground so designated, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined in a sum not exceeding fifty dollars.

Certificates given by physicians, &c. on death of persons.

8. When any white person shall die in said city, the physician or surgeon, who attended such person in his or her last sickness, shall leave a note, in writing, signed with his name, with some one of the family in the house where such person died, specifying the name and apparent age of the deceased, and the disease of which he or she died; and every physician, or surgeon, refusing or neglecting to make and deliver such note shall forfeit the sum of twenty dollars: and no sexton of any burying ground in said city, shall permit any dead body of a white person to be interred therein, until he shall have received such note, signed as aforesaid, or in case no physician or surgeon shall have attended such deceased, or the physician or surgeon who did attend, have refused or neglected to deliver such note; then a like note signed by some one of the family, in which such person shall have died; the contents of said note shall be entered by said sexton, on a blank schedule to be furnished by said board of commissioners, and delivered with said schedule on Saturday in every week, to the clerk of said board of commissioners for publication, who shall cause the said list

Publication of list of deaths.

(*See page 639, sec. 7.) of deaths to be published* weekly in the newspapers printed in the city of Natchez, under the penalty of fifty dollars for each neglect. And every sexton, or other person, having charge of any burying ground in said city, refusing or neglecting the duties required by this act, shall forfeit the sum of twenty dollars, for every such offence.

Health officer. 9. Said board of commissioners shall appoint annually, some suitable person (being a skilful physician) a health officer, who shall continue in office until the first day of January next succeeding his appointment; and said board of commissioners shall keep some suitable person stationed at the place commonly called Bacon's Landing about two miles below said city of Natchez, from the first day of June until the first day of November, to give notice to said board of commissioners, and health officer, of the arrival of any vessel, boat or barge, of the description in the next succeeding section.*

(*See act of Feb. 10, 1821. sec. 7, page 640.)

Examination of boats by health officer. 10. All vessels, steamboats, barges or other boats, ascending the river Mississippi, after the first day of June, and before the first day of November, from any place beyond the limits of this state, and bound to Natchez, or any other place within the limits of this state, between said Bacon's Landing and the mouth of the river Yazoo, shall come to, at said Bacon's Landing, or anchor opposite thereto, and be subject to the examination of said health officer, and to the direction of said board of commissioners; and said health officer shall repair immediately on board of said vessel, steam boat, barge or other boat, and there make strict search, examination and inquiry, as to the health of the officers, passengers, seamen or boat hands, and into the state and condition of the cargo and contents of such vessel, boat or barge respectively: And to enable him more effectually to make such examination, he may put all such questions to the persons on board, as he may deem necessary; and the persons to whom such questions shall be put, may be required to answer the same on oath, which oath, said health officer is authorised to administer; and every person swearing falsely in the premises, shall be liable to the pains and penalites of wilful and corrupt perjury. Any person who shall oppose or obstruct the health officer in performing the duties required of him by this act shall be considered guilty of a misdemeanor, and be fined in a sum not exceeding five hundred dollars. Said health officer, whenever on such examination, he shall judge such vessel, steam boat, barge or other boat and her cargo clean, safe and free from infection; and her officers, passengers and crew healthy and free from all contagious diseases, shall give a permit in writing, for such vessel, steam boat, barge or other boat, to proceed, land and unload her cargo at any place within this state; and any vessel, steam boat, barge or other boat ascending the river Mississippi, from any place beyond the limits of this state, after the first day of June and before the first day of November, which shall come to, or land at any place within this state, between said Bacon's Landing and the mouth of the Yazoo, or land any passenger or other person therefrom, or unlade or put on shore any goods, wares or merchandise from such vessel, steam boat, barge or other boat, within said limits, without such permit, the captain, owner, or other person having charge of the same, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined in a sum not less than five hundred dollars nor exceeding two thousand dollars.

Quarantine.

11. When the health officer, on the aforesaid examination, shall find that any such vessel, steam boat, barge or other boat shall have arrived from any other place where yellow fever, or other pestilential fever prevailed at the time of her departure thence, or if, during her voyage, any person shall have died, or been sick on board with such fever, or if, in the judgment of said health officer, there shall be reason to believe that such vessel, steam boat, barge or other boat is infectious, or has on board articles suspected of containing infectious matter, whether brought from foreign parts or generated on board, he shall immediately report the same specially in writing to said board of commissioners, and direct said vessel, steam boat, barge or other boat, her officers, passengers, seamen or boat hands, to remain at said Bacon's Landing, or opposite thereto, which is hereby declared to be the place of quarantine,* until the determination of said board of commissioners be notified in relation thereto: and said board of commissioners, on such report, shall order such vessel, steam boat, barge or other boat, to remain at quarantine for such space of time as they may deem necessary, not exceeding forty days, and direct the unlading and detaining of her cargo, at said Bacon's Landing, if they deem the same necessary, and may make such order respecting the landing of the officers, passengers, seamen or boat hands, on board as they may deem expedient: Also direct the cleansing and white-washing of such vessel, steam boat, barge or other boat, in such manner as may be necessary. Every master, owner, consignee and person having charge of such vessel, steam boat, barge or other boat, refusing to comply with such requisition of said health officer or board of commissioners, shall be considered guilty of a misdemeanor, and on conviction thereof, shall be fined in a sum not exceeding two thousand dollars: and every officer, passenger, seaman or boat hand, of, or coming in such vessel, steam boat, barge or other boat, who shall leave said quarantine, or go to any place contrary to the directions of said health officer, or board of commissioners, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined in a sum not exceeding one thousand dollars.

(*See page 640—41.)

12. Said board of commissioners shall order to the place of quarantine, or to some other place of safety, any vessel, steam boat, barge or other boat, at the landing of the city of Natchez, or in the vicinity, which they may deem prejudicial to public health; and in case the master, owner or consignee of such vessel, steam boat, barge or other boat, shall refuse or neglect to obey such order, the person so offending, shall be considered guilty of a misdemeanor, and on conviction thereof,

shall be fined in a sum not exceeding one thousand dollars; and if such master, owner or consignee, cannot be found, or shall refuse or neglect to obey such order, said board of commissioners may remove such vessel, steam boat, barge or other boat, at the expense of such master, owner or consignee.

13. No vessel, steam boat, barge or other boat, arriving from any place, at any time, having on board any person sick of any yellow or pestilential fever, or other contagious or infectious disease, or on board of which any person shall have died during the voyage, of such fever or disease, shall be permitted to come to, or land at any landing place within the limits of the city of Natchez, until the master, owner or consignee, shall have reported such vessel, steam boat, barge or other boat, and her situation, and that of the persons on board, as to the circumstances above mentioned, to the said board of commissioners; who shall cause such vessel, steam boat, barge or other boat, to be immediately visited by the health officer, and on his report, make such order for the removal of such vessel, steam boat, barge or other boat, as they are authorised to make, and execute, in case of vessels, steam boats, barges and other boats, at the landing or its vicinity, by the preceding section of this act, under the same penalties for disobedience thereof; and said board of commissioners shall make such order as to the removal or landing of any sick, or other person on board of such vessel, steam boat, barge or other boat, as they may deem expedient; and any master, owner or consignee, who shall land, or bring to, or cause to be landed, or brought to, any such vessel, steam boat, barge or other boat, at said landing, or shall land any person therefrom, without having made such report, other than the person landed to make the same, or after making such report, shall land or bring to such vessel, steam boat, barge or other boat, or land any person therefrom, contrary to the directions of said board of commissioners, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined in a sum not exceeding two thousand dollars.

Ferry.

14. The right of leasing and regulating the ferry from the landing at the city of Natchez, to Vidalia, in the county of Concordia and state of Louisiana, is vested in the corporation of said city, according to an ordinance of said city now in force respecting the same, or such ordinances as may be hereafter adopted, but said ferry shall be annually leased, under the express condition, that the ferryman or person keeping said ferry, shall at all times take the health officer on board of any vessel, steam boat, barge or other boat, which it may be his duty to visit, and return him therefrom, free of any charge or compensation therefor: And the said board of commissioners shall receive annually, the sum for which said ferry may be leased or rented, to be appropriated to the purpose of carrying this act into execution.

Compensation of health officer.

15. Said health officer shall receive for visiting every vessel, the following compensation, to be paid by the captain, owner or commander thereof, to wit: for every sloop, schooner or sail

vessel, other than the vessels hereafter mentioned, the sum of ten dollars, and one dollar for each and every passenger on board of said vessel; for every steam boat, the sum of ten dollars, and one dollar for each and ever passenger on board said boat; for every barge, the sum of ten dollars; for every keel boat, the sum of five dollars.

Temporary hospital.

16. Said board of commissioners may erect a temporary hospital, at or near said Bacon's Landing, for the reception of such sick persons as the health officer may at any time think proper to remove on shore for their better accommodation, or cure, or to prevent the spreading of any infectious or pestilential disease: And said hospital shall be under the government and direction of said board of commissioners, and attendance of said health officer.

17. A majority of said board of commissioners shall constitute a quorum to do business.

18. Nothing in this act, contained, shall prevent the common law remedy against nuisances.

Suspension of the quarantine regulations.

19. The governor may, by and with the consent of said board of commissioners, at any time when they may deem it safe, suspend by proclamation, for such limited time as they may deem expedient, the operation of so much of this act as relates to the visiting, examination, quarantine, or stoppage of any vessels, steam boats, barges or other boats, and of the persons and cargoes therein, before the landing of such vessels, steam boats, barges or other boats, or persons at the city of Natchez.

20. All fines and penalties, imposed by this act may be sued for, and recovered by said board of commissioners, in their name or the name of any one of them, and shall be received and applied by them towards defraying the expenses incident to the execution of this act.

21. If any person be sued for any thing done in pursuance of this act, he may plead the general issue, and give this act, and the special matter in evidence.

22. This act, and every part thereof, shall be subject to be altered, amended or repealed, as the legislature of the state may deem advisable.

Chairman of the board of health.

By an act passed January 18, 1819, of the following title, to wit: An act, to amend the act entitled An act for the more healthy police of the city of Natchez, and to provide against infectious and pestilential diseases, passed February 5th, 1818, it is provided that at the first meeting of the board of health and police, or as soon after as convenient, the commissioners shall choose by ballot from among their own number a chairman, who shall hold his office until the first day of January ensuing, and until his successor be appointed, unless sooner discharged for mal-conduct; the chairman shall preside at all meetings of the board if present, preserve order and decorum, call meetings of the board when necessary, sign all warrants on the treasury, and perform all the duties appertaining to the office of chairman of the board.

Clerk.

2. At the first meeting of the board after their appointment,

or as soon after as convenient, the commissioners shall choose by ballot, a clerk, to continue in office for one year and until his successor be appointed, unless sooner removed from office, who shall perform the same duties as required by the act to which this is an amendment, and such other duties as the said board of commissioners may prescribe; and he shall receive in full for his services, two dollars per day for each day he may be necessarily employed in the duties of his office, to be paid out of the funds belonging to the board, on an order of the board, signed by the chairman thereof.

Treasurer.

3. The said commissioners shall appoint by ballot, a treasurer, who shall continue in office until the first day of January next succeeding his appointment unless sooner removed; and he shall take charge and safely keep all moneys belonging to said board of health, pay the same on warrants issued by order of said board and signed by the chairman, and render an account to the said board, whenever and as often as thereto required. Said treasurer, shall within three days after his appointment, enter into bond in the penal sum of four thousand dollars payable to the chairman of the board for the time being, and his successors in office, for the use of said board, with one or more securities to be approved of by the chairman of said board, conditioned that the said treasurer shall well and faithfully keep all moneys belonging to said board, pay the same on warrants, pay over to his successor in office all funds belonging to said board at the expiration of his appointment, and perform all the duties appertaining to the office of treasurer.

4. The said commissioners may hold their meetings at such places, within the city of Natchez, as they may appoint, and in case of the absence of the chairman, they may choose one of the number present, chairman *pro tempore*, who shall have the same power and authority that the chairman would have if present.

Expense on the streets, alleys, &c.

5. The labor to be done and performed, and expense to be incurred in conformity with the provisions of the third section of the act to which this is an amendment, shall be paid for in the following manner, viz: if the labor is done or the expense incurred on any of the public streets, lanes or alleys, in said city, the expense shall be paid out of the funds under the control of the board of health, and if done on lots belonging to individuals, or on private property, the same shall be paid by the owner or owners, occupier or occupiers of such property.

6. If any owner or owners, or occupier of any lot or lots in the city, shall not within such time as the said board of health may direct, cause such drains, sewers or vaults to be made as the said board may order, or shall not cleanse or fill up such sewer, drain, sink, vault or cellar as the said board may order or direct, the said board of health may cause the same to be done, and if the owner or owners, occupier or occupiers of the lot or lots, on which such labour is bestowed or expense incurred, shall not when notified of such expense defray the same, the board of health may cause said lot or lots, or a sufficiency

thereof to be sold at public sale on giving twenty days' notice in one of the newspapers published in the city of Natchez, of such sale, and the proceeds shall be applied to pay the expense incurred on such lot or lots and the sale of the same, and the residue, if any, to be paid over to the owner or owners of such lot or lots, their heirs or assigns, and said board may transfer and convey to the purchaser or purchasers, of such lot or lots, all the estate, right, title and interest of the owner or owners thereof; provided, that if the owner or owners of the lot or lots so sold, their heirs or assigns, shall, within one year, pay to the purchaser or purchasers thereof, or to the treasurer of said board, the expense incurred on said lot or lots, with interest at the rate of one hundred per cent. per annum, the sale shall be void and the purchaser or purchasers, their heirs or assigns shall reconvey to the owner or owners accordingly.

7. The Sexton's report of deaths in said city, shall be published by order of the board in one newspaper printed in said city. Sexton's report.

8. If any person on board any vessel, steam boat, barge or other boat, ascending the river Mississippi, after the first day of June, and before the first day of November, and during the time that boats and vessels are required to ride quarantine, according to the provisions of the act to which this is an amendment, shall come within the limits of the city of Natchez, without the written permission of the health officer, or board of health, he shall forfeit and pay the sum of fifty dollars, for every time he shall come within the limits, and for every day he shall remain therein, to be recovered before any court having cognizance thereof, one half to the use of said board of health, and one half to the use of the informers; and such informer may release to said board his interest in the fine, and on the execution of such release, he shall be a competent witness to prove the charge alleged against such aggressor.

9. The president and selectmen of the said city of Natchez, shall pay over annually as soon as collected, to the treasurer of the said board of health, one fourth of the tax which may be assessed and collected in said city, for city purposes, to be appropriated by the said board of health in carrying this act, and the act to which this is an amendment into execution. Sum to be expended by board of health

10. The fourth section of the act to which this is an amendment, and all acts and parts of acts, coming within the meaning and purview of this act, are repealed.

By an act, to revise, alter and amend "An act for the more healthy police of the city of Natchez, and to provide against infectious and pestilential diseases," passed February 10, 1821, so much of "An act for the more healthy police of the city of Natchez, and to provide against infectious and pestilential diseases," as provides for the appointment of five commissioners of health and police for the said city is repealed; and the board of commissioners of health established by said act, is abolished. Powers of board of health vested in president and selectmen.

2. All the power, privileges, immunities and authority vested by the above recited act, and the acts amendatory thereto, in

the said board of commissioners of health, and consistent with the provisions of this act, are vested in the president and selectmen of the said city, and they are required to perform all things required of said commissioners by virtue of said acts.

3. All rules and regulations prescribed in said acts, in relation to said board of commissioners shall apply to the president and selectmen of said city; the burying ground in said city, or appertaining to said city, shall be under the control of the said president and selectmen, and all the duties to be performed by the health officer, ferryman, physician, sexton and others, according to the provisions of said acts, shall be performed by them respectively, in relation to the said president and selectmen.

Quarantine.

4. The place called Bacon's Landing, shall not, hereafter, be considered as the place of quarantine, unless it shall be established by the said president and selectmen, as hereafter provided.

5. The said president and selectmen shall establish a place of quarantine on the river Mississippi, within the limits of the city of Natchez, or within two miles thereof, and the same when established, shall be made known by advertisement in the public newspapers printed in said city of Natchez, and thereafter be considered as the place of quarantine.

6. All fines and penalties imposed by said acts, shall and may be sued for and received by the said president and selectmen, in their corporate name, and shall be applied by them towards defraying the expenses incident to the execution of this act and the acts to which this is an amendment.

7. The first, second, third, fourth and ninth sections of "An act for the more healthy police of the city of Natchez, and to provide against infectious and pestilential diseases," passed February 5, 1818, are repealed.

8. In case the president and selectmen of the city of Natchez shall determine to establish the place of quarantine out of the limits of said city, they shall have and exercise authority and jurisdiction over said place of quarantine with the same powers as if said place were within the limits of said city.

Burying ground.

9. The said president and selectmen of the city of Natchez may purchase and hold any quantity of land not exceeding ten acres, out of the limits of said city, for a burying place, with the same effect, powers and privileges as if the said burying ground were within the limits of said city.

10. The said president and selectmen may establish quarantine and enforce the quarantine laws, at any time of the year that the public safety may require, and discontinue the same, when the public safety may not require its continuance.

11. In case the said president and selectmen shall select a site for the place of quarantine, and the owner or owners thereof shall refuse to sell the same for that purpose, for a fair price, the said president and selectmen shall make application for a writ of *ad quod damnum*, to the county court of Adams county, and having given ten days' previous notice to the proprietor of such land, if he be to be found in the county aforesaid, if not,

then to his agent, if any he hath, the said court shall thereupon order their clerk to issue such writ, to be directed to the sheriff of the county, commanding him to summon and empannel twelve good and lawful men, freeholders of said county, to meet upon the land selected for the place of quarantine, on a certain day to be named by the court and inserted in said writ, of which notice shall be given by said sheriff to the said proprietor or his agent, as before directed, if neither of them were present in court when such order was made; and the jurymen aforesaid shall be charged and sworn by the sheriff impartially and to the best of their skill and judgment, to view the said land proposed for the place of quarantine, and to locate and circumscribe by certain metes and bounds, having due regard therein to the interest of the parties, and to appraise the same, according to its true value; the inquest so made and sealed by the said jurors, together with the writ, shall be returned by the said sheriff to the succeeding court, who shall thereupon order summons to be issued to the person or persons, proprietor or tenants of the land so located, if they be to be found within the county aforesaid, if not, then to his or their agent therein, if any they have, to show cause why the said president and selectmen should not have the land thus designated; and if on such inquest it shall appear to the court reasonable, that such land shall be condemned for the place of quarantine, they shall condemn the same accordingly; and the said president and selectmen shall upon paying to the proprietor or proprietors so entitled, the value of the land so to be assessed as aforesaid, become seized in fee simple of said land; but if said place of quarantine shall be at any time hereafter discontinued, or changed, the land so condemned shall revert to the original proprietor, his heirs and assigns, on their refunding the purchase money to the said president and selectmen, or their successors; and the said president and selectmen, shall have the right of a suitable way from the said river, and from said city, to said place of quarantine.

NATCHEZ HOSPITAL.

By An act, to establish a hospital in the city of Natchez, and for incorporating trustees for the same, passed January 18, 1805, a hospital shall be established in the city of Natchez for the reception and relief of indigent boatmen, and paupers of every description in this territory, who may be in want of medical aid and assistance; and who, if out of the limits of the city, may be sent thither by order of any justice at the expense of his proper county; to be known by the name of the "Natchez Hospital," to be under the care of a body politic and corporate, as hereinafter provided. John Steele, Adam Bingaman, William Brooks, William G. Forman, Abijah Hunt, John Girault, Ferdinand L. Claiborne, Samuel Postlethwaite, Jr. John Henderson, and Job Ruth, together with the mayor of the city of Natchez for the time being, are created a body politic and

Body corporate.

corporate, by the name of "The President and Trustees of the Natchez Hospital;" and they and their successors duly elected members of the said corporation, shall remain a body politic and corporate by that name forever; and they and their successors, shall be capable of suing and being sued, pleading and being impleaded, in all courts and places whatsoever; and may have a common seal, and alter the same at pleasure. They and their successors shall by the same name in law, be capable of receiving, purchasing, holding and conveying any estate real or personal, for the institution and use of the said hospital; all subscriptions, donations, grants, gifts, bequests and devises made, or that may be made, for the institution and use of said hospital, shall vest in the said corporation, for the use and benefit of the said hospital, and for effecting the purposes and intentions of donors and grantors. The number of the said trustees, including the president, shall not exceed eleven, six of whom shall be a quorum for doing any business. The president and trustees may fill all vacancies in the said corporation, by the election of suitable persons as successors; and determine the time and place of their meetings, and the manner of notifying the same. The said president and trustees shall elect from their own body a treasurer, who shall give bond and security to the said corporation, in the sum of ten thousand dollars, conditioned for the faithful performance of the duties of his office, and for rendering a just and true account of all moneys, securities and property of every kind, coming into his possession as treasurer, and as often as thereto required. All deeds signed and delivered by the said treasurer, by order of the said president and trustees, sealed with their seal, shall be considered as the deed of the corporation. All moneys, securities and other property of the said president and trustees, coming into the hands of the said treasurer, together with all books, in which his accounts, as treasurer, are entered and kept, and all papers and vouchers thereto appertaining, that may be in his hands at the expiration of his office, shall, on demand of him, his executors or administrators, be paid and delivered over to his successors. All moneys recovered on the treasurer's bond, shall be paid to the president and trustees, for the uses, and subject to the appropriations aforesaid. The said president and trustees may employ physicians and surgeons, to attend the said hospital, with such powers and under such regulations as the said president and trustees shall deem expedient: Such physicians and surgeons shall be of the city of Natchez, so long as the medical faculty, in that place, will attend the institution gratis. The said president and trustees may elect and appoint managers, overseers or stewards of the said hospital, and all necessary officers and servants; declare the tenures, salaries, emoluments and duties of officers; determine the mode of ascertaining what description of persons or patients are entitled to admission into the said hospital and to the benefits of the institution, gratis:—what description of persons or patients shall be admitted on terms of compensation, and the *quantum*

Treasurer.

Physicians, &c. may be employed.

Overseers, stewards, &c.

thereof:—make all reasonable by-laws, not repugnant to the ordinances and laws of this territory, with reasonable penalties for the good government of the said institution. The said president and trustees may erect and keep in repair, one or more house or houses for a hospital, and such other buildings as they may deem necessary for the said institution. The legislature of this territory may alter or restrain any of the powers by this act vested in the said corporation.

Election of president.

By An act, to amend an act entitled "An act, to establish a hospital in the city of Natchez, and for incorporating trustees of the same," passed December 3, 1810, the trustees incorporated by the above recited act, shall hold a meeting on the second Monday in December, annually, and elect, by ballot, from among their own number, a president, who shall hold his appointment during one year, and shall preside and keep order at all meetings of the said trustees; and in case of the death or resignation of the president, said trustees may elect a successor.

NATCHEZ WATER COMPANY.

Company incorporated.

Stock.

By An act, to incorporate the Natchez Water Company, passed February 12, 1819 for the purpose of introducing water into the city of Natchez, by means of leaden or wooden pipes, Nathaniel Morrison, Samuel Postlethwaite, Lewis Evans, Edward Turner, Micajah Terrell, Charles B. Green, Walter Irvine, William Rutherford, and William Brooks, and their associates, successors and assigns are constituted a body corporate and politic, to be known by the name of the "Natchez Water Company," and by that name may sue, and be sued, plead and be impleaded, defend and be defended, answer and be answered, in any suit, action or matter, in any court of law or equity, and do all acts which a body corporate may lawfully do; may have a common seal, and the same may alter at pleasure; and also establish such by-laws as shall seem necessary for the government of said corporation, and for carrying into effect the objects of their institution. A sum not exceeding two hundred thousand dollars may be raised by subscription, to be composed of shares of one hundred dollars each; and subscriptions for raising said stock, shall be opened at Natchez under the direction of the persons aforesaid. When five hundred or more shares shall have been subscribed, the said persons shall convoke the stock-holders, who, or a majority of them, shall choose seven directors, and transact any other business appertaining to the objects of the institution. After the first election of directors, the subscription shall no longer be conducted by the persons aforesaid, but the management thereof shall in future, be in the power of said company. The directors shall continue in office one year, and until their successors are chosen; they may fill any vacancy in their own body until the next election, and appoint one of their own body, president, whose powers and duties shall be prescribed by said company. A meeting may at any time be called by a majority of the directors, or by one third of the whole number of said company, or by the proprietors of one third of the shares: But no such meeting shall legally proceed to do any business unless a quorum, consisting of the members of said company, or of the proprietors of at least two thirds of the shares, shall be present. In all meetings of said company, each share shall be entitled to one vote, and shareholders may vote by proxy appointed by writing, which shall be produced to the company. The shares in said company shall be considered personal property and shall be transferable by assignment in writing, to be executed, authenticated and registered as the said company may direct. The amount of each share shall be paid in such instalments as the company by themselves or directors may prescribe: If the instalment required on any share shall not be paid at the time prescribed, the directors on giving ten days' notice in one or more of the public newspapers published in the city of Natchez, may sell by public auction, all the right of the holder of such share, and if the share so disposed of shall sell for more than the amount due upon it, the overplus shall be held by the company for the benefit of such delinquent holder.

Meetings.

NATCHEZ STEAM BOAT COMPANY.

Company incorporated.

By An act, to incorporate the Natchez Steam Boat Company, passed February 20, 1819, Samuel Postlethwaite, John Hankinson, William Bullit, Augustus Griswold, John Richards, Elijah Smith, and Micajah Terrell, and such other persons as now are, or hereafter may become members of the Natchez Steam Boat Company are constituted a body corporate and politic, by the name and style of the "Natchez Steam Boat Company," and by that name they and their successors shall have perpetual succession; they may purchase, take, receive, hold and enjoy to the use of them and their successors, all manner of estates both real and personal, and sell, or otherwise dispose of the same, not exceeding five hundred thousand dollars. By the name aforesaid, they may sue, and be sued, plead and be impleaded in all manner of actions and controversies either in law or equity. The said company shall be governed by such constitutions and by-laws as may have been, or shall be made by the company, not repugnant to the constitution and laws of this state.

NATCHEZ FIRE COMPANY.

By An act, to incorporate the Fire Company in the city of Natchez, passed February 19, 1819, James Berthe, John T. Griffith, William Brooks, George Ralston, William Bullit, Jr. Rees E. Fleeson, P. P. Schuyler, John Henderson, A. Scrantom, Jr. William Rutherford, Thomas Munce, Abijah Hull, James Steen, William Snodgrass, John Lombard, Daniel M'Graw, John Railton, Micajah Terrell, Jacob Eiler, Barnet Williams, Christopher H. Kyle, Joseph B. Lyons, Justin W. Foote, Horace

Huntington, Christopher Miller, Philo Nichols, William Cathcart, Samuel Davis, James Brown, Frederick Brune, Levi Purnell, Lewis Evans, James C. Wilkins, Elijah Smith, William Shipp, and Jonathan Thompson, are incorporated under the name of the "Fire Company of the city of Natchez," and they and their successors shall have perpetual succession; may have one common seal, purchase and hold property, real and personal, to the amount of ten thousand dollars, institute and maintain suits, and be capable of being sued in law, and may make all needful by-laws for their good government, not contrary to the constitution and laws of this state, and may do such acts as pertain to a body corporate and politic. The said company may fill vacancies by elections to be made by their own body. The said company, or a majority of them, may associate themselves together, elect a presiding officer, and all other officers who may be necessary for the good government and orderly dispatch of business, and may inflict fines upon delinquent members, not exceeding twenty dollars, for any breach of their by-laws, or any other nonconformity to their regulations. It shall be the duty of said Fire Company and it is declared to be an indispensible condition of their charter of incorporation, that they use their best endeavors, to preserve the city from all danger of fire, and from all circumstances that may lead to such danger, and they shall at all reasonable times, keep up a patrol, to be composed of persons belonging to said company, who, when acting, shall be subject to the laws relating to patrols, and in times of imminent danger or manifest necessity, the president and selectment of the said city, may order the performance of such patrol duty by said company or some of them, and it is also declared as a condition of their charter, that the said company provide a fire engine for the use of said company, buckets for the conveyance of water, and all other necessary engines for the extinguishment of fire. The corporation of the city of Natchez, shall pay into the treasury of said company, as much money as the said company may expend out their private funds, for the purchase of a fire engine, ladders and any other things necessary for the effective operation of said company, water buckets alone excepted, which each member of said company shall procure on his own account. The members of said company, during the continuance of their charter, and the said company observing the conditions of the same, shall be exempted from militia duty, in time of peace; but not in times of war, insurrection or public danger. If any of the conditions herein before mentioned, shall be violated by said company, their charter of incorporation shall be considered as forfeited, and the attorney general shall proceed in the mode provided by law, to ascertain the fact of forfeiture, and have the charter vacated by the judgment of a court of law.

Company incorporated.

Election of officers.

ELECTION DISTRICTS.

In Adams. By An act, to divide the county of Adams into election districts, passed February 17, 1819, it is provided that elections may be held in said county, at the Old Court house—at the house of John Baker, and in the town of Washington. The elections shall be held at the same time and under the superintendence of inspectors, appointed as prescribed by the act entitled An act, to regulate elections in this state. The inspectors shall make out a fair statement of the votes given at said elections and the number of votes for each candidate, and deliver the same within one day after the close of the elections to the sheriff of said county, whose duty it shall be to attend said elections, by himself or his deputy, and perform the duties required of him by the act aforesaid.

An act, to establish election districts in the county of Adams, passed November 20, 1821, provides that elections may be held in said county, at the house of Mrs. Mary Ann Ross, in the Jersey settlement, and at the house of John Dixon. The elections to be conducted according to the existing laws of the state regulating elections.

The sheriff of said county is required to attend the same in person or by deputy appointed for that purpose; if the managers chosen by the county court to superintend said elections, or either of them, fail or neglect to perform that service, the sheriff or his deputy shall appoint a manager or managers to supply the vacancy occasioned thereby; and he shall administer the oath to the managers and clerks of the elections according to law. The polls taken at said places, shall be delivered to the sheriff at the court house of said county, together with a list of the names of the voters, within three days after an election shall be closed, who shall compare the same and certify the person having the highest number of votes, to be duly elected, and the returning officer shall return the same within ten days thereafter to the office of the secretary of state. If the sheriff of said county, shall fail to perform the duties enjoined on him by this act, he shall forfeit one thousand dollars, to be recovered by information or indictment in the superior court of said county, one half of which shall go to the informer, if claimed, and the other half to the state.

In Jefferson. By An act, establishing an additional election district in the county of Jefferson, passed February 3, 1818, it is provided, that elections may be held at the house of Patrick Scarborough, in said county. The sheriff shall attend such elections, by himself or deputy, and in all things, conform to the laws of the state, relative to elections, as near as the case may be.

An act, to establish additional election districts, in Jefferson county, passed February 12, 1820, authorises elections to be held in said county, at or near John Buel's mill, on Cole's creek,—at or near the Petit Gulf and at Uniontown. The elections shall be held at the same time, and by inspectors, appointed in the same manner as prescribed by law regulating elections; and the inspectors shall make out a fair statement of the votes given at said elections, and the number of votes for each candidate, and deliver the same within one day after the close of said elections, to the sheriff of said county. The sheriff shall attend such elections by himself or by deputy, appointed for that purpose, who shall perform the duties required of sheriffs in holding elections; and in case the sheriff or his deputies do not attend, the coroner or a justice of the county court, or of the peace, may perform said duties.

In Claiborne.

(*See next succeeding act.)

By An act, to establish separate election districts in the counties of Amite, Claiborne and Green, passed January 13, 1818, it is provided that elections shall be held at the house of *John Robinson*,* on Little Sandy creek, in Claiborne county. The elections shall be holden at the same time and under the superintendence of inspectors and clerks appointed in the same manner that is or may be prescribed by law for regulating elections. The inspectors shall make out a fair transcript of the votes given at said separate elections, for each candidate, and deliver those given in the separate election district, to the sheriff, within two days after the close of each election, who shall be returning officer for the whole of said county. The sheriff of said county shall attend such separate elections by himself or deputy, and perform all the duties required of sheriffs in holding elections, and if the sheriff or his deputy do not attend, the coroner or a justice of the peace, may perform the duties of sheriff as is or may be provided by law.

By An act, passed June 20, 1822, of the following title: An act, to amend the act, entitled "An act, to establish separate election districts in the counties of Amite, Claiborne and Green," approved the 13th day of January, 1818, the separate election for the county of Claiborne, authorised to be held at the house of John Robinson, on Little Sandy creek, shall hereafter be held at the house of Isaac Powers, at the Rocky Springs.

In Claiborne, Franklin, Wilkinson and Marion.

An act, to establish additional election districts, in the counties of Claiborne, Franklin, Wilkinson and Marion, passed February 7, 1821, authorises elections to be held at the house of Stephen Miller, in Claiborne county:—At the house of Henry O'Neal, and at David Thompson's old gin, in Franklin county:—At Mount Pleasant post office; at Fort Adams; at Valentine Groom's, and at Six's ferry, on Homochittto, in Wilkinson county:—And at Camp Jackson, in Marion county. The elections at the respective places aforesaid, shall be conducted according to the existing laws, not inconsistent with this act; the sheriffs of the several counties shall attend the same ~~in person~~, or by deputy, appointed for the purpose; and if the managers chosen by the county court to superintend said elections, or either of them, fail or neglect to perform the service, the sheriff, or his deputy, shall appoint a manager or managers to supply the vacancy occasioned thereby, and shall administer the oath to the managers and clerks according to law. The polls taken at each place of election shall be delivered to the sheriff at the court house of the several counties, together with a list of the names of the voters, within three days after an election shall be closed; who shall compare the same and certify the person or persons having the highest number of votes, to be duly elected, and return the same within ten days thereafter to the office of the secretary of state. If the sheriffs of said counties, shall fail to perform the several duties enjoined on them by this act, they shall forfeit one thousand dollars, to be recovered by information or indictment in the superior court of the county, one half of which shall go to the informer, if claimed, and the other half to the state.

In Warren. An act, to establish an additional election district in Warren county, passed February 1, 1820, authorises an election to be held in said county at the Walnut hills, at the house of Mr. Myransee, or as near there as may be convenient, for holding said election. The election shall be held at the same time and under the superintendence of inspectors and clerks appointed in the manner that is or may be prescribed by law for regulating elections. The inspectors shall make out a fair transcript of the number of votes given at said separate election, for each candidate, and deliver the same to the sheriff within two days after the close of each election. The sheriff of said county shall attend such separate elections by himself or deputy, and perform the duties required of sheriff in holding elections; and if the sheriff and his deputy do not attend, the coroner or a justice of the quorum, or of the peace, may perform all the duties of sheriffs, as is or may be provided by law on the subject of elections.

In Franklin. An act, to establish additional election districts in Franklin and Jefferson counties, passed February 20, 1819, provides that elections may be held at the house of Joseph Robinson and at the house of Jonathan Guice, sen. in Franklin county. The elections shall be held at the same time and under the superintendence of inspectors and clerks appointed in the manner that is or may be prescribed by law for regulating elections. The inspectors shall make out a fair transcript of the number of votes given at said separate elections for each candidate and deliver the same to the sheriff within one day after the close of each election. The sheriff shall attend such separate elections by himself or deputies and perform all the duties required of sheriffs in holding elections; if the sheriff or his deputies do not attend, the coroner or a justice of the quorum or of the peace, may perform all the duties of sheriffs as is or may be provided by law on the subject of elections.

In Perry and Marion. By An act, to establish additional election districts in the counties of Perry and Marion, passed June 25, 1822, it is provided that elections may be held on the premises of David Reise:—at the house of Robert Garaway and at or near James Harper's in Perry County:—and at or near Johnston's Mills in Marion county. The elections shall be held at such times and in such manner as is prescribed by law for holding elections in this state.

An act, to establish additional election districts in the county of Hancock, passed November 24, 1821, provides that elections may be held at the house of John Deal, on red creek and at the residence of William Stackhouse in said county. The said separate elections shall be held at the same time and under the superintendence of inspectors appointed in the same manner as is prescribed by the act entitled—An act, to regulate elections in this state, passed February 5, 1818. The said inspectors shall make out a fair statement of the votes given at said elections and the number of votes for each candidate and deliver the same within four days after the close of said elections to the sheriff of said county, whose duty it shall be to attend said elections by himself or by deputy and perform the duties required of him by the aforesaid act. In Hancock.

By An act, to establish an additional place for holding elections in Jackson county, passed December 12, 1816, elections are authorised to be held at the house of James Ware, in said county, at the same time and under the superintendence of inspectors appointed in the same manner, as is prescribed by the act entitled—An act, to amend and reduce into one the several acts regulating elections. The inspectors shall make out a fair statement of the votes given at the said election, and the number of votes for each candidate, and deliver the same within three days after the close of said election, to the sheriff of said county. The sheriff shall attend said election by himself or deputy and perform all the duties required of him by the act aforesaid, and if the sheriff fail to attend, the coroner or a justice of the peace may perform the duties of the sheriff. In Jackson.

An act, authorising an additional place of holding elections in Jackson county, and for other purposes, passed November 23, 1821, provides that elections may be held at Captain Walter Davis's Mill in said county. The elections shall be held at the same time and under the superintendence of inspectors appointed in the same manner as is prescribed by law regulating elections in this state. The sheriff shall attend said elections by himself or deputy and perform the duties required of him by law. The said inspectors shall make a fair statement of the number of votes for each candidate and deliver them to the sheriff or returning officer for said county within two days after the close of said election.

By An act, establishing an additional election district in the county of Wayne, passed February 29, 1819, elections are authorised to be held at the house of David Williams in said county. The sheriff shall attend such elections and in all things conform to the laws relative to elections as near as the case may be. In Wayne.

An act, authorising an additional place of holding elections in Wayne county and for other purposes, passed February 12, 1820, provides that elections shall be held at the house of Jesse Cole in said county. The elections shall be held at the time and under the superintendence of inspectors appointed in the manner prescribed in the act entitled—An act, to regulate elections in this state. The said inspectors shall make a fair statement of the number of votes for each candidate, and deliver the same within one day after the close of said election to the sheriff of said county, whose duty it shall be to attend the said elections by himself or his deputy and perform all the duties required of him by the aforesaid act.

In Monroe. It is provided by An act, to divide the county of Monroe into election districts, passed February 9, 1821, that elections shall be held at the house of Stephen Smith; and at the house of John H. Leech in the town of Columbus in said county. The elections shall be held at the time and under the superintendence of inspectors appointed in the manner prescribed in the act entitled An act, to regulate elections in this state.

In Covington. An act, for the establishment of two additional election districts in the county of Covington, passed February 10, 1820; elections are authorised to be held at the house of Harrison Watson and at the house of William Magehee in said county. The elections shall be held at the same time and under the superintendence of inspectors and clerks appointed in the same manner that is or may be prescribed by law for regulating elections. The said inspectors shall make out a fair transcript of votes for each candidate and deliver the same to the sheriff within three days after the close of each election. The sheriff shall attend such separate elections by himself or deputy and perform the duties required of sheriff in holding elections; and if the sheriff or his deputy do not attend, the coroner or a justice of the peace may perform the duties of sheriff as is or may be provided by law.

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